



**CITY OF PITTSBURG
PLANNING COMMISSION MEETING AGENDA**

JULY 28, 2020

**CITY HALL COUNCIL CHAMBER
65 CIVIC AVENUE, PITTSBURG, CA**

PUBLIC ADVISORY:

THE CITY COUNCIL CHAMBER WILL NOT BE OPEN TO THE PUBLIC

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the regular meeting of the Planning Commission for July 28, 2020 will be conducted telephonically through Zoom and broadcast live through Granicus on the City's website which can be located on the [Streaming Media](#) page. If you do not have internet access, the meeting will also be available to the public in a listening-only mode via telephone call-in line. To listen to the meeting, dial 1 (669) 900-6833. When prompted, dial in the Webinar ID, 814 1542 8884 and Password, 086252.

Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Council Chamber will not be open for the meeting. Planning Commissioners will be participating telephonically and will not be physically present in the Council Chamber.

Comments can be submitted via email to meetingcomments@ci.pittsburg.ca.us. If you wish to have your comments read to the Planning Commissioners during the appropriate Public Comment period, please indicate in the Subject Line "FOR PUBLIC COMMENT" and list the item number you wish to comment on. If your comment is for a non-agenda item, indicate "FOR PUBLIC COMMENT – NON-AGENDA." Comments that you want read to the Commission will be subject to the three-minute time limitation (approximately 350 words). In the event the Commission receives a high-volume response, read-in comments may be subject to a shortened time limitation of two minutes (approximately 250 words). Written comments that are only to be provided to the Planning Commission and not read at the meeting will be distributed to the Commissioners prior to the meeting if received by 5:00 p.m. the date of the meeting. Comments via text and social media (Facebook, Twitter, etc.) will not be accepted. Just as in a live meeting inside the Council Chamber, only one comment per agenda item per person is allowed. If you comment more than once on a particular topic, only the first email will be read aloud.

The City of Pittsburg thanks you in advance for taking all precautions to prevent spreading the COVID 19 virus.



City of Pittsburg Planning Commission Agenda

July 28, 2020

**City Hall Council Chamber
65 Civic Avenue, Pittsburg, CA 94565**

**Regular Meeting
7:00 P.M.**

Planning Commission Members

**Sarah Foster, Chair
Christopher Moreno, Vice-Chair
Dr. Trinh Nguyen, Commissioner
Wolfgang Croskey, Commissioner
James Coniglio, Commissioner
Punita Bhasin, Commissioner
Elissa Robinson, Commissioner**

Any member of the public who wishes to address the Commission should complete a Speaker's Card, available on the public counter below the dais. Please note on the card the agenda item number, or, for items not listed on this agenda, a brief description of the issue on which you would like to address the Commission. Give the completed form to the Minutes Clerk or a staff member, who will give the card to the Commission Chair. The Chair will invite the speaker(s) to the podium at the appropriate time during the meeting. Each individual will be given three minutes to address the Commission, unless additional time is allowed as provided for spokespersons. Prior to speaking, each speaker is requested to state his or her name and business and city of residence in a clear and audible tone of voice. For items listed under the "Public Hearings" or "Commission Consideration" portions of this agenda, the public hearing or public comment period will follow a brief presentation on the item by Planning Department staff and/or the project applicant.

A decision by the Planning Commission is not final until the appeal period expires 10 calendar days after the date the decision occurred. The applicant, City Council member(s), City Manager, or any affected person may appeal the denial, approval, recommendation, or any condition of approval of an item within the 10-day appeal period. A completed appeal form and the applicable filing fee must be filed with the City Planner, 65 Civic Avenue, Pittsburg. The appeal form must include the name and address of the appellant and state the reasons for the appeal. The appeal will be set for City Council consideration and appropriate public notification given.

The Commission requests that you refrain from disruptive conduct during the meeting and that you observe the order and decorum of the Council Chamber. Please turn off or set to vibrate all cellular phones, and refrain from making personal, impertinent or slanderous remarks. Boisterous or disruptive behavior while the Commission is in session, and the display of signs in a manner that violates the rights of others or prevents others from watching or fully participating in the Planning Commission meeting is considered counterproductive and will not be tolerated, and the Commission Chair can order any person who engages in such conduct to leave the Council Chamber.

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

DELETIONS, WITHDRAWALS OR CONTINUANCES

COMMENTS FROM THE AUDIENCE

CONSENT

1. **Minutes**
Minutes of July 14, 2020

PUBLIC HEARINGS

2. **Recommendation on the Faria/Southwest Hills General Plan Amendments, Rezoning Amendments Including Master Plan, and Development Agreement. AP-10-717 (GP, RZ, DA)**
This is a public hearing on a request for recommendation of City Council approval of a development agreement, amendments to the General Plan and rezoning designations, and adoption of a Master Plan for future development of an approximately 607-acre site located in the hills southwest of the existing city limits. The proposed Master Plan would allow for development of approximately 341 acres of residential use and require approximately 265 acres to be preserved for open space, where the current General Plan allows for up to 478 acres of residential use and 129 acres of open space. Proposed amendments would not change existing maximum development potential (1,500 single family units), rather they would focus the development to the center of the site within the valley area. In addition, the proposed project also includes consideration of an Environmental Impact Report (EIR) and a subsequent request for the City to initiate proceedings to annex the property to the City of Pittsburgh. APN's 097-180-002, 097-180-006, 097-190-002, 097-200-002, 097-200-003, 097-230-008 & 097-240-002.

STAFF COMMUNICATIONS

COMMITTEE REPORTS / COMMISSIONER COMMENTS

ADJOURNMENT OF PLANNING COMMISSION MEETING

NOTICE TO PUBLIC

NOTICE TO THE DISABLED AND VISUALLY OR HEARING IMPAIRED

In compliance with the Americans with Disabilities Act, the city of Pittsburg will provide special assistance for disabled citizens. Upon request, an agenda for any meeting shall be made available in appropriate alternative formats. The Council Chamber is equipped with sound amplifier units for use by the hearing impaired. The units operate in conjunction with the Chamber's sound system. You may request the sound amplifier from the City Clerk for personal use during Commission meetings. If you need special assistance to participate in this meeting, or are requesting a specially formatted agenda, please contact the City Clerk at 925-252-4850. Notification 48 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility to this meeting or provide the requested agenda format. (28 CFR 35.102-35.104 ADA Title II)

GENERAL INFORMATION

Copies of the open session agenda packets that are distributed to the Planning Commission are on file in the office of the Planning Department, 65 Civic Avenue, Pittsburg, California, and are available for public inspection, beginning no fewer than 72 hours in advance of the meeting, during normal business hours (8:00 a.m. – 5:00 p.m., Monday through Friday, except city holidays). Additionally, if any reports or documents that are public records are distributed to the Planning Commission fewer than 72 hours before the meeting, those reports and documents will also be available for public inspection in the city's Planning Department and at the Commission meeting. The Pittsburg Library is also provided a full agenda packet for your convenience. As a courtesy, the agenda is also located on the city's website at www.ci.pittsburg.ca.us.

**MINUTES
OF A REGULAR MEETING
OF THE
PITTSBURG PLANNING COMMISSION**

July 14, 2020

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the regular meeting of the Planning Commission for July 14, 2020 was conducted telephonically through Zoom with broadcasting live through Granicus on the City's website. Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Council Chamber was not open for the meeting. Council Members participated telephonically or through Zoom and were not physically present in the Council Chamber.

Chair Foster called the meeting of the Pittsburg Planning Commission to order at 7:00 p.m. on Tuesday, July 14, 2020, in the Council Chamber at City Hall, 65 Civic Avenue, Pittsburg, California via Zoom teleconference.

ROLL CALL

Present: Chair Foster, Vice-Chair Moreno, Commissioners Nguyen, Croskey, Coniglio, Bhasin, Robinson

Staff: City Attorney Donna Mooney, Community Development Director Jill Hecht, City Engineer Richard Abono, Planning Manager/ Secretary Kristin Pollot, Assistant Planner Celina Palmer, Deputy City Clerk Amanda McVey, Administrative Coordinator Shelby Rose

PLEDGE OF ALLEGIANCE

Commissioner Nguyen led the Pledge of Allegiance.

DELETIONS / WITHDRAWALS / CONTINUANCES

There were none.

COMMENTS FROM THE AUDIENCE

There were no comments from the audience.

CONSENT

1. Minutes of June 23, 2020

On motion by Commissioner Coniglio and seconded by Commissioner Robinson to approve the Minutes of June 23, 2020 and carried by the following vote:

AYES: Bhasin, Coniglio, Croskey, Moreno, Nguyen, Robinson, Foster
NAYES: None
ABSTAIN: None

ABSENT: None

COMMISSION CONSIDERATION

2. Arco Station Car Wash Relocation, AP-19-1473 (UP, DR, VA)

A public hearing on a request for use permit, design review and variance approval of plans to demolish an approximately 968 square foot carwash and construct a new approximately 3,200 square foot carwash building within the rear yard setback, at 1190 East Leland Road in the CC (Community Commercial) District.
Assessor's Parcel No. 088-230-024.

Assistant Planner Palmer gave a presentation on the item.

Applicant Mike W. Sater and Alex G. Cuevas spoke on behalf of their application.

There being no one to speak further to the item, Chair Foster closed the public hearing.

On motion by Commissioner Croskey to amend Condition of Approval to move the car wash building as close to the southern property line as possible and seconded by Commissioner Moreno to approve and carried by the following vote:

AYES: Coniglio, Croskey, Moreno, Nguyen

NAYES: Bhasin, Robinson, Foster

ABSTAIN: None

ABSENT: None

ZONING ADMINISTRATOR REPORTS

4. The Zoning Administrator submits one resolution previously approved under the delegated authority (Planning Commission Resolution No. 9918).

The Commissioners acknowledged receipt.

STAFF COMMUNICATIONS

Planning Manager / Secretary Pollot notified the Commission of the upcoming Faria Subdivision Project scheduled to be brought before Planning Commission at the next regular scheduled meeting.

Planning Manager / Secretary Pollot suggested the Commission convene to next regular meeting of July 28, 2020.

COMMITTEE REPORTS / COMMISSIONER COMMENTS

Commissioner Robinson reported on the Land Use Subcommittee meeting. Two items were on the agenda related to cannabis and potential redevelopment of city owned property located on Bliss Avenue.

ADJOURNMENT

The meeting was adjourned at 7:51 p.m. to July 28, 2020.

Respectfully Submitted,

Kristin Pollot, AICP, Secretary

**CITY OF PITTSBURG
PLANNING COMMISSION
STAFF REPORT
July 28, 2020**

ITEM: Recommendation on the Faria/Southwest Hills General Plan Amendments, Rezoning Amendments Including Master Plan, and Development Agreement. AP-10-717 (GP, RZ, DA)

ORIGINATED BY: Louis Parsons, on behalf of Faria Land Investors, LLC., 4061 Port Chicago Hwy., Concord CA, 94520

SUBJECT: This is a public hearing on a request for recommendation of City Council approval of a development agreement, amendments to the General Plan and rezoning designations, and adoption of a Master Plan for future development of an approximately 606-acre site located in the hills southwest of the existing city limits. The proposed Master Plan would allow for development of approximately 341 acres of residential use and require approximately 265 acres to be preserved for open space, where the current General Plan allows for up to 478 acres of residential use and 129 acres of open space. Proposed amendments would not change existing maximum development potential (1,500 single family units), rather they would focus the development to the center of the site within the valley area. In addition, the proposed project also includes consideration of an Environmental Impact Report (EIR) and a subsequent request for the City to initiate proceedings to annex the property to the City of Pittsburg. APN's 097-180-002, 097-180-006, 097-190-002, 097-200-002, 097-200-003, 097-230-008 & 097-240-002.

RECOMMENDATION:

Staff recommends that the Commission review and consider the EIR and adopt Resolution No. 10154 recommending that the City Council approve the General Plan amendments, rezoning amendments (including adoption of the draft Master Plan), and development agreement for the Faria/Southwest Hills Annexation project, as proposed.

BACKGROUND:

On November 5, 2005, the voters of Pittsburg approved a ballot initiative entitled, 'Measure P (City of Pittsburg Voter Approved Urban Limit Line and Rezoning Act)', which established a new Urban Limit Line (ULL) for Pittsburg that extended the urban growth limits for the City and rezoned certain properties, including the entire 606-acre project site, to HPD (Hillside Planned Development) and OS (Open Space) Districts, consistent with existing General Plan residential and open space designations.

On May 3, 2006, the City entered into a Memorandum of Understanding with Altec Homes, Inc., Albert D. Seeno, III, and Albert D. Seeno, Jr., which called for the City to conduct a General Plan Study in order to, among other things, establish guidelines for the development of a permanent greenbelt buffer along the inner edges of the voter-approved ULL. The buffer was intended to provide permanent preservation of all land between the City of Concord border and the first set of ridges, including the tops of these same ridges, which generally run parallel to the common border. On January 16,

2007, the City Council adopted Resolution No. 07-10700, which included a new General Plan policy, 2-P-91, that was added to ensure that a greenbelt buffer would be established on the project site, in accordance with the terms of Measure P and the MOU. In 2010, the property owner submitted an application requesting that the City begin processing a request for annexation of the site, which would move the City boundary so that the property is within City limits and no longer part of the unincorporated County.

Between 2010 and 2011, environmental review was conducted for the proposed annexation and a draft Initial Study and Mitigated Negative Declaration was released on January 5, 2011 and circulated for a public comment period ending on February 3, 2011. Upon review of public comments, it was determined that some project changes and additional environmental review would be necessary for the proposed annexation. At this point, the project was placed on hold while the applicant evaluated its options.

In 2014, the project was modified to include a request for amended rezoning to identify an "Interim Study Overlay" (-S) District, which would designate the site as an area where zoning regulations would remain under study until such time when the developer was ready to come forth with a formal and detailed development plan. The 2010 Initial Study was updated to reflect the revised project proposal, and a Notice of Preparation (NOP) of a programmatic EIR was prepared and released for a 30-day public review period from March 10 to April 8, 2014. On April 3, 2014, the City held a scoping meeting.

In response to comments received during the 2014 NOP scoping period, the applicant decided to further modify the proposed project with the addition of a Master Plan to better identify the proposed development parameters. Along with this change in the project, the approach for the environmental analysis was modified to study the project-level impacts (rather than the more general programmatic-level impacts) to the greatest extent feasible, assuming a maximum development scenario of 1,500 new residential units, as envisioned in the City's existing General Plan.

A new NOP was released on March 8, 2017, for a 30-day public review period ending April 7, 2017. The City held a scoping meeting on April 4, 2017, and a Notice of Availability and the Draft EIR was released on October 10, 2018 for an extended public review period ending on November 30, 2018. The City conducted a public workshop on the Draft EIR on November 15, 2018.

Based on the comments received on the Draft EIR, the City determined that recirculation of Chapter 4.12, pertaining to Transportation, Traffic, and Circulation, was necessary to comply with CEQA, and as such a Partially Recirculated Draft EIR was released for a public review period from October 18 to December 2, 2019.

Since circulation of the Draft EIR and Partially Recirculated Draft EIR, a total of 132 comment letters have been received on the environmental analysis. A Final EIR was recently completed which provides responses to each comment within each of the 132

letters received. The Final EIR, together with the Draft EIR and Partially Recirculated Draft EIR, were made available on the City's website for review (www.ci.pittsburg.ca.us/faria) on July 17, 2020. On July 21, 2020, the City of Concord submitted a comment letter dated December 2, 2019, on the Partially Recirculated Draft EIR. A separate response to this late comment letter was prepared.

PROJECT DESCRIPTION:

Existing Conditions: The project site is located in the southwest hills and encompasses approximately 606 acres of land. The site is characterized as vacant and undeveloped hillside land, just beyond the southwestern boundary of the City. Elevations on site range from 435 to 1,010 feet above sea level. The project site is generally bounded by Bailey Road and the approved (but not yet constructed) "Bailey Estates" subdivision to the east; the Concord city limits and recently closed Concord Naval Weapons Station (CNWS) to the south and west; and the San Marco and Vista Del Mar residential subdivisions along the northern boundary and other open space areas along the northeastern boundary. A map of the project site is attached to this report.

Proposed Project: As stated above, the application being considered by the Planning Commission consists of three main components: 1) rezoning amendments (including the draft Master Plan); 2) General Plan amendments; and 3) development agreement.

Master Plan and Rezoning Amendments:

The rezoning amendments would reclassify the site from HPD and OS Zoning Districts, to RS-4-P (Single Family Residential, 4,000 square foot minimum lot size with Master Plan) and OS-P (Open Space with Master Plan) Districts (see Exhibit 1 and 2 in the report below). As noted, the "-P" added to each zoning district signifies a Master Plan Overlay District. To comply with this proposed zoning, a draft Master Plan has been prepared (see attached for the full text). Pursuant to the Pittsburg Municipal Code, the purposes of a Master Plan are to: 1) ensure sensitive site planning and design consistent with the City's General Plan; 2) maintain an environmental equilibrium consistent with existing vegetation, soils, geology, topography, and drainage patterns; and 3) avoid premature or inappropriate development that could result in incompatible uses or create public service demands exceeding the capacity of existing or planned facilities.

The proposed Master Plan includes a land use map, development regulations, design review guidelines and a definition of the proposed circulation system. The general theme of the land use map is to focus all development within the natural valley area that runs through the middle of the site (north to south) and allow for a natural buffer on the east and the west, where several prominent ridgelines are located and would remain mostly untouched. The development in the center of the site would include a denser product (3-5 units per acre) on the northern half of the site, compared to a less dense product (1-3 units per acre) on the southern half.

The development regulations and design guidelines have been crafted to foster appropriate hillside development patterns, which can be more complex than development in other areas of the City because of the unique topography of the property. The overall traffic circulation pattern for the site is largely unknown at this time; however, under the proposed Master Plan, the project would ensure that San Marco Boulevard would be extended and continue south through the site and Bailey Estates, serving as the backbone for development to branch off, and eventually connect to Bailey Road to the east. Design guidelines for the larger on-site circulation system have been incorporated into the plan.

Exhibit 1 – Existing Prezoning

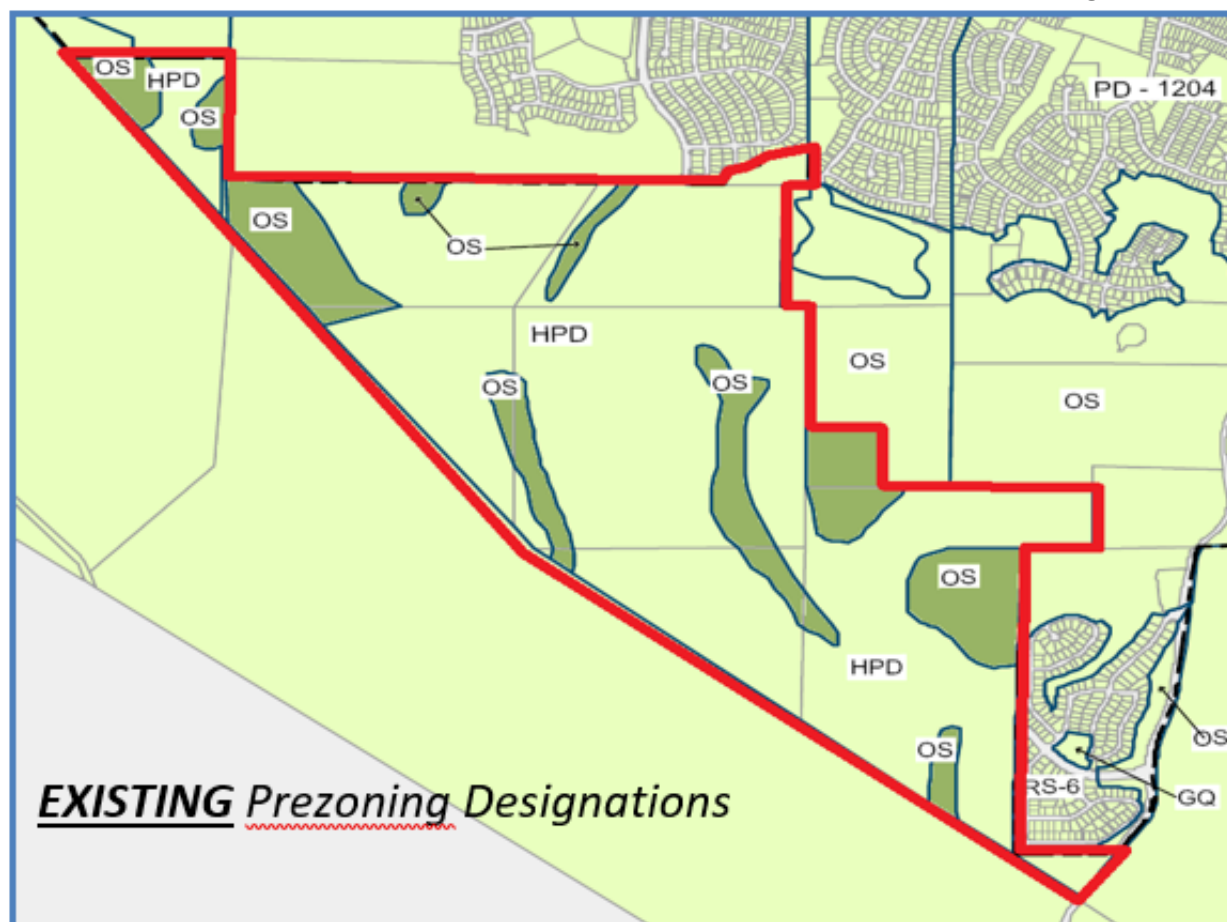
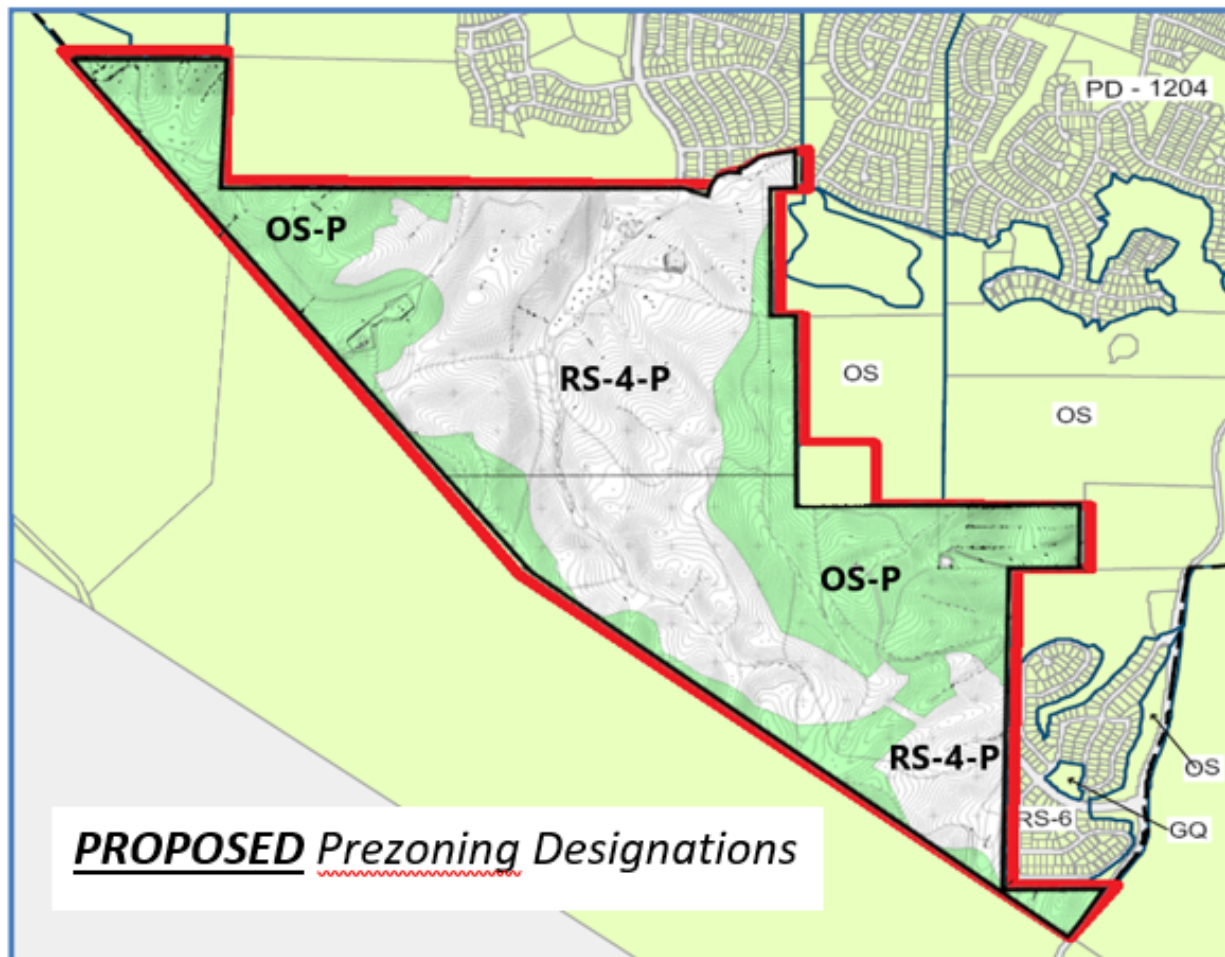


Exhibit 2 – Proposed Prezoning



General Plan Amendments:

As stated above, the site is currently comprised of approximately 478 acres of Low Density Residential (1 to 7 units per acre) or Hillside Low Density Residential (less than 5 units per acre) land use, and 129 acres of Open Space within the Pittsburg General Plan. The proposed General Plan mapping amendment would change the land use designations on the site to match those proposed in the draft Master Plan and prezoning amendment (see Exhibit 3 and 4 below). A greenbelt buffer required by General Plan policy 2-P-91, would also be established as part of the proposal by designating all land along the western edge of the property as Open Space.

Exhibit 3 – Existing General Plan

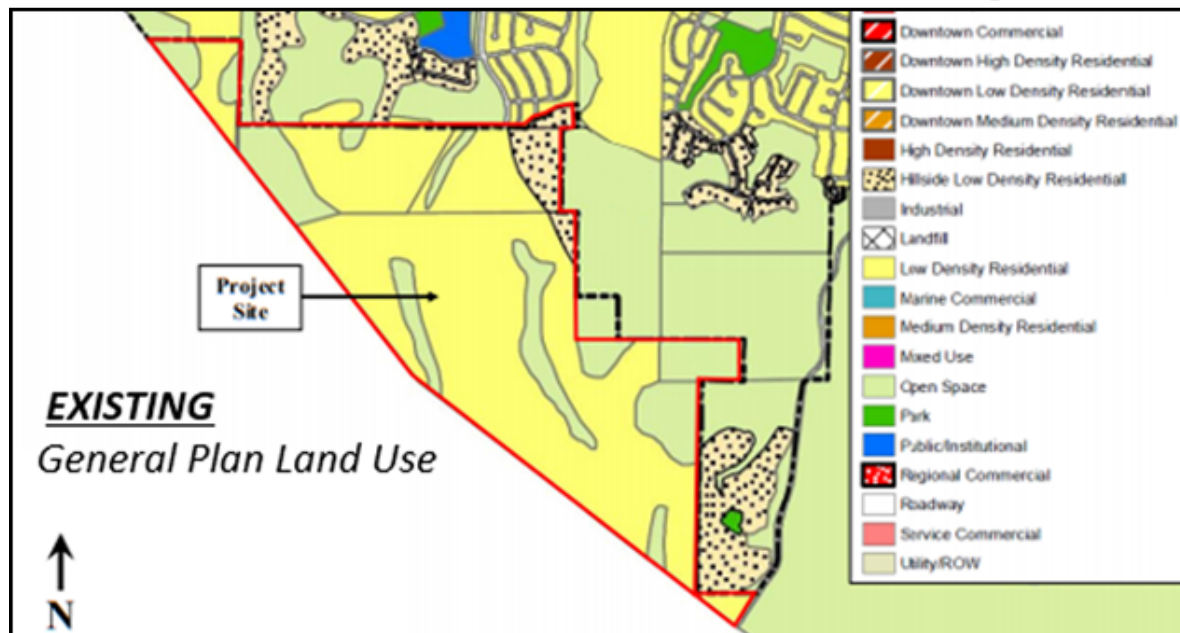
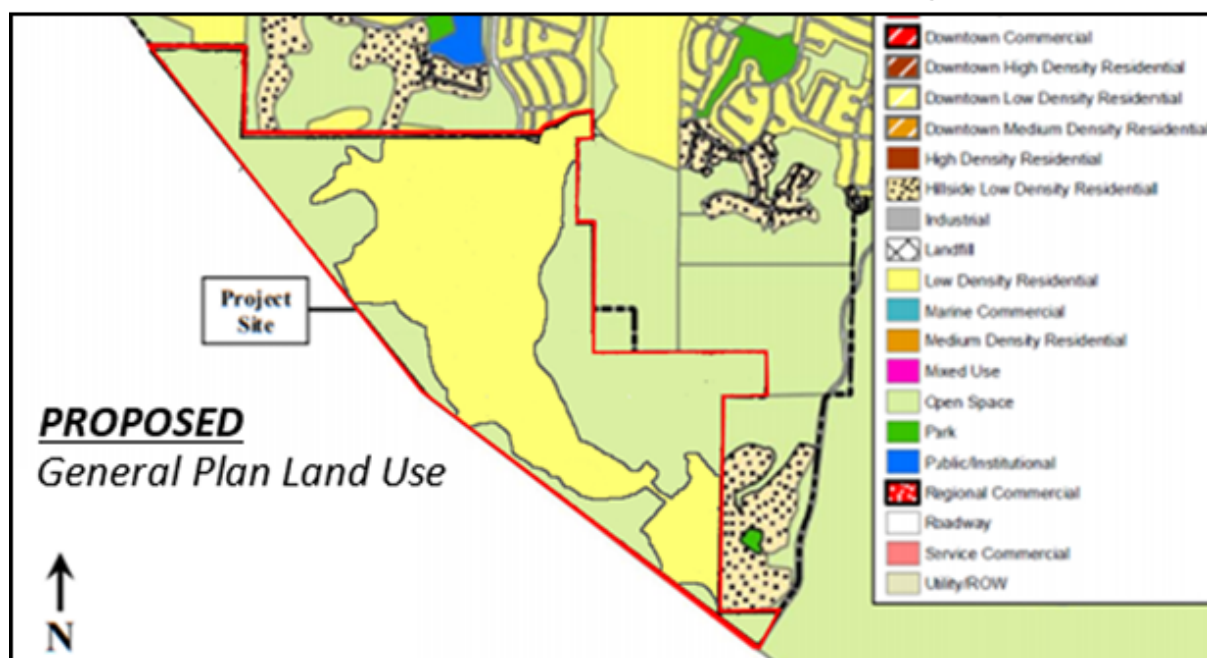


Exhibit 4 – Proposed General Plan



The project also includes general plan text amendments and the deletion of one goal and seven design related policies. The text amendments proposed are listed below (new text shown with underlined font, and text proposed for deletion is shown with ~~strikethrough font~~):

[Urban Design Element]

Goal 4-G-4: Encourage development that preserves unique natural features, such as topography, rock outcroppings, mature trees, creeks, and designated major and minor ridgelines, in the design of hillside neighborhoods.

Policy 4-P-2: As part of the development review process, require design review of proposed hillside development. Encourage ~~Ensure~~ that:

- Hillside development that is clustered in small valleys and behind minor ridgelines, to preserve more prominent views of the southern hills.
- Hillside streets that are designed to allow open views by limiting the building of structures or planting of tall trees along the southern edge or terminus of streets.

Policy 4-P-11: Limit grading of hillside areas over 30 percent slope (see Figure 10-1 [of the General Plan]) to elevations less than 900 feet, foothills, knolls, and ridges not classified as major or minor ridgelines (see Figure 4-2 [of the General Plan]), unless deemed necessary for slope stability remedial grading, or installation of City infrastructure. ~~During review of development plans, ensure that necessary grading respects significant natural features and visually blends with adjacent properties.~~

[Health and Safety Element]

Goal 10-G-6: Limit development on slopes greater than 30 percent (as delineated on Figure 10-1 [of the General Plan]) to lower elevations, foothills, and knolls, unless it can be demonstrated that appropriate soil stability techniques can be implemented.

The following General Plan goal and policies are proposed for deletion:

[Delete] Goal 2-G-33: Maintain the general character of the hill forms.

[Delete] Policy 4-P-10: Minimize grading of the hillsides. Amend the City's Zoning Ordinance to allow density bonuses of 10 percent (maximum) for new hillside development that preserves 40 percent of natural hill contours.

[Delete] Policy 4-P-12: Encourage terracing in new hillside development to be designed in small incremental steps. Extensive flat pad areas should be limited.

[Delete] Policy 4-P-14: Preserve natural creeks and drainage courses as close as possible to their natural location and appearance.

[Delete] Policy 4-P-20: Discourage lot orientation that fronts onto the cross-slope of street segments on steep grades.

[Delete] Policy 4-P-22: Discourage placement of lots that allow the rear of homes to be exposed to lower elevation views.

[Delete] Policy 4-P-25: During development review, encourage residential rooflines that are oriented in the same direction as the natural hillside slope.

[Delete] Policy 4-P-26: Reflect the predominant colors and textures within the surrounding landscape in selection of building materials for hillside development. Roof colors should tend toward darker earth tones, so that they are less visible from adjacent or upslope properties.

Draft Development Agreement:

The developer has requested that the City enter into a Development Agreement, which has the purpose of locking in fees and regulations to provide certainty during a multi-year project, and in exchange, developer would have the following contractual obligations: a) payment of fees to assist in the financing of unmet local and regional traffic improvement needs; b) construction of a minimum 150 rent-restricted accessory dwelling units throughout the future project to fulfill inclusionary housing obligation under Pittsburgh Municipal Code (PMC) Chapter 18.86; c) inclusion of at least 75 single-story houses spread throughout the future project; d) payment of \$100,000 to expand the City's security camera network; e) payment of a \$1,000,000 community benefit fee; f) payment of \$50,000 to construct monument city entry signs; g) installation of basic home security systems into each future house; and h) annexation of the site into all applicable Community Facilities Districts (CFDs) for park maintenance, off-site stormwater facilities, police and other emergency services, and fire facilities, fire safety and emergency services.

GENERAL PLAN/CODE COMPLIANCE:

The project site is located in the Southwest Hills Subarea of the General Plan, and has been envisioned since the General Plan adoption in 2001 as accommodating a variety of Low Density Residential, Hillside Low Density Residential, and Open Space uses, with a maximum of 1,500 residential units to be spread across the entire 606 acre site (see General Plan policy 2-P-96).

The proposed General Plan land use mapping amendment would redistribute the residential and open space areas on the site. The result would increase the amount of open space area and decrease the amount of residential area; however, as proposed by the applicant, the overall maximum unit count for development would not be changed and the reconfigured land uses would still allow for up to 1,500 residential units on the site. While no specific development plan has been proposed at this time, the General Plan land use change would essentially concentrate all of the development to the center of the site, within the natural valley-like area located between two existing prominent ridgelines. As described above, this proposal would necessitate revision and/or deletion of three existing General Plan goals and nine related policies; however, it would be

consistent with all other applicable goals/policies related to hillside development on the site (see attached General Plan Consistency Table).

The proposed RS-4-P and OS-P overlay district designations would be consistent with the proposed Low Density Residential and Open Space General Plan land use designations for the site. The proposed amendments to the zoning map and adoption of the proposed Master Plan (see attached) would be consistent with the objectives, policies, general land uses and programs specified in the General Plan, in that the proposed Land Use & Development regulations within the Master Plan would apply as requirements of any new development application associated with the site. In addition, the Design Review Guidelines included in the Master Plan are also derived from existing General Plan policies and would provide subdivision design guidance for any future development applications.

Development Agreement: Pursuant to PMC 18.44.020, the City Council adopted procedures and requirements for considering, adopting and reviewing development agreements on November 25, 1996, through Resolution No. 96-8371. Article V, Section A of City Council Resolution No. 96-8371 states that the Commission shall hold a public hearing to consider the application for a development agreement and may make recommendations to the City Council concerning the application. A development agreement is approved by the City Council by ordinance.

Required Finding – General Plan: The California Government Code and PMC identify the Planning Commission as the advisory body to the City Council on amendments to the General Plan. No findings are required by the Planning Commission in order to recommend approval of a general plan amendment; however, Government Code section 65358 would require that the City Council find the amendments to be in the public interest.

Required Findings – Rezoning & Master Plan: PMC section 18.16.020 identifies the Planning Commission as the advisory body to the City Council on proposed changes to the zoning map. Prior to making a recommendation, the Planning Commission must find, in accordance with PMC 18.48.030 and 18.72.070, that:

- 1) The change proposed is consistent with the objectives, policies, general land uses and programs specified in the General Plan and applicable specific plan;
- 2) A community need is demonstrated for the change proposed;
- 3) Its adoption will be in conformity with public convenience, general welfare and good zoning practice;
- 4) The proposed master plan will comply with the land use and development regulations of the base zoning district and does not significantly alter the regulations; and

- 5) The proposed master plan can be adequately, reasonably and conveniently served by public services, utilities and public facilities.

Environmental: Amendments to the General Plan, zoning ordinance (including rezoning amendments and adoption of a master plan), development agreements and annexation applications, are all subject to the California Environmental Quality Act (CEQA) in accordance with Public Resources Code section 21080. As such, an initial study was first prepared when the project began in 2010. Following that analysis, an NOP was circulated for public review in 2014, to collect comments on the proposed analysis to be included in the Draft EIR. After substantial comments were received on the 2014 NOP, the project was revised, and a new NOP was circulated on March 9, 2017, for the current project proposal. Following receipt of all public comments during the new 30-day public review period, and comments received at the public scoping session held on April 4, 2017, a Draft EIR was prepared (SCH #2017032027).

On October 10, 2018, the Draft EIR was released for a 45-day public review period, which was extended to November 30, 2018, and on November 15, 2018, a public comment meeting was held. Based on the comments received regarding the Draft EIR, the City determined that recirculation of Chapter 4.12, pertaining to *Transportation, Traffic, and Circulation*, was necessary to comply with CEQA Guidelines. On October 18, 2019, a Partially Recirculated Draft EIR was circulated for a new 45-day public review period.

On July 17, 2020, the Final EIR, consisting of both the Draft and Partially Recirculated Draft EIR, comments received on both documents, responses to those comments, and any revisions made to the Draft and Partially Recirculated Draft EIR, was finalized and released for public review in compliance with Public Resources Code Section 21092.5.

The Planning Commission is not responsible for certifying the Final EIR for this project; however, prior to making any recommendations on the proposed project outlined in this report, the Planning Commission must review and consider the Final EIR in its draft or final form. The Final EIR identified 47 potentially significant environmental effects as being likely to occur as a result of the proposed project. These potentially significant impacts fall into the following resource categories:

- Aesthetics
- Agricultural Resources
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Public Services and Utilities
- Transportation, Traffic and Circulation

For the majority of the potentially significant impacts, the EIR identifies one or more mitigation measures that would reduce the severity of said impact to a less than significant level. However, for 12 remaining impacts, the EIR concluded that even with mitigation incorporated, the impacts could not be reduced to a less than significant level, and as such would remain significant and unavoidable. A brief discussion of each of

these impact areas is provided below; however, staff recommends review of applicable impact discussions from the Final EIR, including the Draft and Partially Recirculated Draft EIR and response to comments, for more detailed information:

- 1) Significant and Unavoidable Aesthetic Impact, 4.1-2: Substantial grading of the site has the potential to significantly impact and degrade the visual quality of the site. In the absence of detailed development plans or/or future project designs, it was conservatively determined that this would be a significant and unavoidable aesthetic impact.
- 2) Significant and Unavoidable Air Quality Impacts, 4.3-1, 4.3-2, 4.3-4 & 4.3-5: Significant impacts were identified for short-term construction related NOx emissions, project operational emissions for near term and cumulative scenarios (due to the size of the project) related to ROG and NOx, and long term GHG emissions which are expected to exceed allowable limits by the year 2030 and would not meet State emissions reduction targets (which are equivalent to 80% below 1990 levels by the year 2050). Even with mitigation incorporated, these impacts would still be considered significant and unavoidable.
- 3) Significant and Unavoidable Public Services and Utilities Impact 4.11-4: Future development of the project site would increase demand for fire services within the Contra Costa County Fire Protection District's (CCCFFPD) service area; however, it would be located outside the 1.5-mile response radius of an existing or planned fire station. Even with the payment of newly implemented fire facility impact fees, the impact is still conservatively considered significant and unavoidable.
- 4) Significant and Unavoidable Traffic, Transportation and Circulation Impacts 4.12-2, 4.12-3, 4.12-5, 4.12-8, 4.12-9, 4.12-11: Even with mitigation proposed, six (6) intersections within the study area would be considered to have unacceptable level-of-service operations under an existing conditions plus project scenario, and eleven (11) intersections (which would include four [4] of the intersections listed under the existing plus project scenario) would be deemed to have unacceptable level-of-service operations under a cumulative scenario (long-term plus project). In addition, two (2) separate freeway segments along State Route 4 and 242 would result in unacceptable Delay Index (DI) under an existing conditions plus project scenario, and four (4) separate freeway segments (which would include 2 segments listed under the existing plus project scenario) along State Route 4 and 242 would result in unacceptable DI under a cumulative scenario (long-term plus project). And finally, two (2) separate freeway segments would result in over-capacity conditions under both the existing conditions plus project scenario and the cumulative scenario (long-term plus project). All of these impacts would be deemed significant and unavoidable.

The Planning Commission is not required to make findings related to the significant and unavoidable impacts. Prior to any project approval, CEQA requires the body that

certifies the EIR, i.e. the City Council, to address each of these impacts by adopting a Statement of Overriding Considerations (SOC). The City Council may consider benefits related to specific economic, legal, social, technological, and /or other anticipated benefits of the project that outweigh the unavoidable adverse impacts and justify approval of the proposed project.

Public Noticing: On or before July 18, 2020, in accordance with Government Code sections 65090 and 65091, and PMC section 18.14.020, a “Notice of Public Hearing” for the July 28, 2020, public hearing on this item was published in the East County Times; posted at City Hall and in the “Public Notices” section of the city website; was mailed via first class or electronic mail to the applicant/property owner, all property owners and/or residents within 800-feet of the site, all local service agencies expected to provide future services to the site, and to individuals who had previously filed written request for such notice. In addition, all though not required, the notice was also published on www.nextdoor.com (“Nextdoor”) and was sent directly to all subscribed members in the following Nextdoor neighborhoods: Oak Hills South, San Marco, San Marco Villas, Toscana and Vista Del Mar.

ANALYSIS:

Staff believes that the Commission can make the findings necessary to recommend approval of the project as proposed.

With the inclusion of the General Plan land use mapping changes and goal/policy revisions/deletions, the proposed change in rezoning and draft master plan would remain consistent with the General Plan and its overarching goals and policies related to hillside development in the southwest hills.

A community need for the proposed project can be demonstrated, in that it would be consistent with the 2005 voter approved Measure P, which brought the property within the ULL, applied the current rezoning designations to the site which allow for development of up to 1,500 new residential units and established the requirement for a greenbelt buffer for open space and ridgeline preservation along the western edge of the site. The proposed amendments would still allow buildout on site of up to 1,500 units, and the land use and rezoning map revisions would reduce the developable area by approximately 137 acres, thereby concentrating residential development within the valley area in the middle of the site, which is also a more environmentally conscious way of developing the area at the densities proposed than the land use layout which currently exists in the General Plan. The proposal would also increase the open space preservation area by approximately 127 acres more than what the current General Plan has planned. Both of these factors make the project better for the community than what exists in the current General Plan and more consistent with good zoning practices.

Future development of the site with up to 1,500 units has been contemplated and planned for by the General Plan for the last 20 years, and has been included within plans for service within the City’s sewer and water system master plans, as well as

other long range planning documents for stormwater drainage/treatment, recreational needs/facilities, and regional growth and transportation.

In addition, as stated above, the proposed development agreement would secure significant funding for various community benefits, incorporate an appropriate amount of affordable housing opportunities to be dispersed throughout the site and ensure adequate financing and funding sources for necessary public services to ensure that future development pays its own way.

ACTION REQUIRED:

In order to recommend adoption of the proposed development agreement, general plan amendments, and rezoning amendments as proposed, the Commission must move to adopt Resolution No. 10154, as described in the attached resolution and exhibits.

ATTACHMENTS:

1. Proposed Resolution No. 10154 (with exhibits)
 - a) Proposed General Plan Map Amendment
 - b) Proposed Rezoning Amendment
 - c) Proposed Master Plan
 - d) Proposed Development Agreement
2. General Plan Consistency Table
3. Final EIR (Available online at www.ci.pittsburg.ca.us/faria)
4. Partially Recirculated Draft EIR (Available online at www.ci.pittsburg.ca.us/faria)
5. Draft EIR (Available online at www.ci.pittsburg.ca.us/faria)
6. Notice of Public Hearing with Vicinity Map

Prepared by: Kristin Pollot, AICP, Planning Manager

PROPOSED
BEFORE THE PLANNING COMMISSION OF THE CITY OF PITTSBURG

In the Matter of:

Resolution Recommending City Council	)	
Approval of General Plan Amendments,	)	
Prezoning Amendments, Master Plan and	)	Resolution No. 10154
Development Agreement for the	)	
"Faria/Southwest Hills Annexation, AP-10-	)	
717 (GP, RZ, DA)."	)	

The Planning Commission DOES RESOLVE as follows:

Section 1. Background

- A. In 2001, the Pittsburg General Plan was adopted with a planned land use development pattern for the southwest hills (outside current city limits) that included a combination of Low Density Residential, Hillside Low Density Residential, and Open Space. The 2001 General Plan land use map for this area has not been amended since its initial adoption.

- B. On November 5, 2005, the voters of the City of Pittsburg approved a ballot initiative entitled, 'Measure P (City of Pittsburg Voter Approved Urban Limit Line and Prezoning Act)', which established a new Urban Limit Line (ULL) for the City of Pittsburg and prezoned certain properties, including the entire 606-acre Faria project site (see Section 1.E below for a description of the property), to HPD (Hillside Planned Development) and OS (Open Space) Districts, consistent with existing General Plan residential and open space designations.

- C. On May 3, 2006, the City entered into a Memorandum of Understanding (May 3, 2006 MOU) with Altec Homes, Inc., Albert D. Seeno, III, and Albert D. Seeno, Jr., which called for the City to conduct a General Plan Study in order to, among other things, establish guidelines for the development of a permanent greenbelt along the inner edges of the voter-approved ULL in the southwest hills.

- D. On January 16, 2007, the City Council adopted Resolution No. 07-10700, which included a new General Plan policy, 2-P-91, that was added to ensure that a greenbelt buffer would be established on the Faria project site, in accordance with the terms of the 2005 Measure P and the May 3, 2006 MOU.

- E. On September 24, 2010, Louis Parsons, on behalf of Faria Land Investors, filed Annexation Application No. 10-717, requesting that the city initiate proceedings to annex approximately 606 acres of land into the municipal boundary. As mentioned above, the property is located in the hills southwest of the existing city limits and is prezoned HPD (Hillside Planned Development) District and OS (Open Space) District. APN's 097-180-002, 097-180-006, 097-190-002, 097-200-002, 097-200-003, 097-230-008 & 097-240-002.

- F. Between 2010 and 2011, environmental review was conducted for the proposed annexation and a draft Initial Study and Mitigated Negative Declaration was circulated for public comment. Upon review of public comments, it was determined that some project changes and additional environmental review would be necessary for the proposed annexation.
- G. In 2014, the project was modified to include a request for amended rezoning for an Interim Study Overlay (-S) District, to designate the site as an area where zoning regulations would remain under study until such time when the developer provided a development plan. The 2010 initial study was updated to reflect the revised project proposal, and a Notice of Preparation (NOP) of a programmatic EIR was prepared and released for public review.
- H. After substantial comments were received on the 2014 NOP, the project was revised again to incorporate the currently proposed Master Plan Overlay (-P) District, in place of the Interim Study Overlay (-S) District. Along with this change in the project, the approach for the environmental analysis was modified to study project-level impacts (rather than the more general programmatic-level impacts) to the greatest extent feasible, assuming a maximum development scenario of 1,500 new residential units as envisioned in the General Plan.
- I. On March 8, 2017, a new NOP for the revised project was circulated for a 30-day public review period ending on April 7, 2017, and on April 4, 2017, a public scoping session was held.
- J. On October 10, 2018, the Draft EIR (SCH# 2017032027) was released for a 45-day public review period that was extended to November 30, 2018, and a public workshop on the Draft EIR was held on November 15, 2018. Based on the comments received regarding the Draft EIR, the City determined that recirculation of Chapter 4.12, pertaining to Transportation, Traffic, and Circulation, was necessary to comply with CEQA Guidelines.
- K. On October 17, 2019, a Partially Recirculated Draft EIR was released for a 45-day public review period from October 18, 2019 to December 2, 2019.
- L. On July 17, 2020, the Final EIR, consisting of both the Draft EIR and Partially Recirculated Draft EIR, comments received on both documents, responses to those comments, and any revisions made to the Draft and Partially Recirculated Draft EIR, was finalized and released for public review in compliance with Public Resources Code Section 21092.5.
- M. Government Code section 65358 provides that the legislative body of a local government agency may amend its general plan, in whole or in part, if it finds that the amendment would be in the public interest. No more than four general plan amendments to each required element may be adopted within one calendar year. For the 2020 calendar year, the City Council has not adopted any amendments to the General Plan Land Use Element to date.

- N. The California Government Code and PMC identify the Planning Commission as the advisory body to the City Council on amendments to the General Plan. Government Code section 65353(a) requires that the Commission conduct at least one public hearing prior to making its recommendation on a proposed General Plan amendment.
- O. The Pittsburg Municipal Code (PMC) section 18.16.020 identifies the Planning Commission as the advisory body to the City Council on proposed changes to the zoning map (including changes in rezoning designations and adoption of a master plan). Prior to making a recommendation, the Planning Commission must find, in accordance with PMC 18.48.030 and 18.72.070, that:
1. The change proposed is consistent with the objectives, policies, general land uses and programs specified in the General Plan and applicable specific plan;
 2. A community need is demonstrated for the change proposed;
 3. Its adoption will be in conformity with public convenience, general welfare and good zoning practice;
 4. The proposed master plan will comply with the land use and development regulations of the base zoning district and does not significantly alter the regulations; and
 5. The proposed master plan can be adequately, reasonably and conveniently served by public services, utilities and public facilities.
- P. Pursuant to City Council Resolution No. 96-8371, the Planning Commission must make a recommendation on a development agreement prior to City Council consideration. The City Council may adopt the ordinance approving a development agreement if it finds that:
1. the development agreement is consistent with the General Plan and any applicable specific plan; and
 2. the development agreement will promote the public health, safety, and general welfare.
- Q. On or before July 18, 2020, in accordance with Government Code sections 65090 and 65091, and PMC section 18.14.020, a "Notice of Public Hearing" for the July 28, 2020, public hearing on this item was published in the East County Times; posted at City Hall and in the "Public Notices" section of the city website; was mailed via first class or electronic mail to the applicant/property owner, all property owners and/or residents within 800-feet of the site, all local service agencies expected to provide future services to the site, and to individuals who had previously filed written request for such notice. In addition, all though not required, the notice was also published on www.nextdoor.com ("Nextdoor") and was sent

directly to all subscribed members in the following Nextdoor neighborhoods: Oak Hills South, San Marco, San Marco Villas, Toscana and Vista Del Mar.

- R. On July 28, 2020, the Planning Commission held a public hearing on Planning Application No. 10-717 (GP, RZ, DA), at which time oral and/or written testimony was considered.

Section 2. Findings

- A. Based on the Planning Commission Staff Report entitled, "Recommendation on the Faria/Southwest Hills General Plan Amendments, Rezoning Amendments, and Development Agreement. AP-10-717 (GP, RZ, DA)," and based on all the information contained in the Planning Division files on the project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburg, and based on all written and oral testimony presented at the meeting, the Planning Commission finds that:
1. All recitals above are true and correct and are incorporated herein by reference.
 2. All impacts identified in the Final EIR, including Draft and Partially Recirculated Draft EIR, and responses to comments, have been independently reviewed and considered, prior to making a recommendation on this project.
 3. The change proposed is consistent with the objectives, policies, general land uses and programs specified in the General Plan and applicable specific plan, in that the project site is located in the Southwest Hills Subarea of the General Plan, and has been envisioned since the General Plan adoption in 2001 as accommodating a combination of Residential and Open Space uses, with a maximum of 1,500 residential units to be spread across the entire 607 acre site (see General Plan policy 2-P-96). The proposed amendments are within the Pittsburg Planning Area, the voter approved Urban Limit Line, and the Pittsburg Sphere of Influence, and they will facilitate implementation of General Plan policy 2-P-91, by concentrating all future development to the center of the site within the natural valley-like area located between two existing prominent ridgelines, and thereby establishing a greenbelt buffer along the western edge of the site to be preserved as open space. Upon final subsequent LAFCO (Local Agency Formation Commission) approval of site annexation into the City, the RS-4-P zoning will allow construction of homes consistent with General Plan goals/policies including 2-G-4, 2-G-5, 2-P-73, 2-P-75, Housing G-1, and Housing P-1.2, P-1.2.B and P-1.2.D, and will provide expanded housing opportunities for the City's moderate and above-moderate income households, thereby helping to balance the City's housing stock and improve the resident-consumer tax base in the City.
 4. A community need is demonstrated for the change proposed in that the proposed amendments will be consistent with the 2005 voter-approved Measure P, which brought the property within the ULL, applied the current rezoning designations to the site which allow for development of up to 1,500 new

residential units and established the requirement for a greenbelt buffer for open space and ridgeline preservation along the western edge of the site. The amendments will increase the open space preservation area by approximately 127 acres and reduce the developable area by approximately 137 acres from what exists in the current General Plan. This change will facilitate implementation of the greenbelt requirements and concentrate future residential development within the valley area in the middle of the site, which could also be considered a more environmentally conscious way of developing the area at the densities proposed, than the land use layout which currently exists in the General Plan.

5. The amendments proposed will be in conformity with public convenience, general welfare and good zoning practice, in that the Master Plan will comply with the overarching goals of the General Plan and they will be consistent with the 2005 voter-approved Measure P, which brought the property within the Urban Limit Line applied the current prezoning designations to the site which allow for development of up to 1,500 new residential units and established the requirement for a greenbelt buffer for open space and ridgeline preservation along the western edge of the site. The amendments will increase the open space preservation area by approximately 127 acres and reduce the developable area by approximately 137 acres from what exists in the current General Plan. This change will facilitate implementation of the greenbelt requirements and concentrate future residential development within the valley area in the middle of the site, providing a more environmentally conscious way of developing the area at the densities proposed than the land use layout which currently exists in the General Plan. This development has been contemplated and planned for by the General Plan for the last 20 years, and has also been planned for service within the City's sewer and water system master plans, as well as other long range planning documents for stormwater drainage/treatment, recreational needs/facilities, and regional growth and transportation.
6. The proposed master plan will comply with the land use and development regulations of the base zoning districts of RS-4 (Single Family Residential with 4,000 square foot minimum lot sizes) and OS (Open Space), and does not significantly alter the regulations; and
7. The proposed master plan can be adequately, reasonably and conveniently served by public services, utilities and public facilities, of which this growth has been contemplated for that last 20 years by multiple planning documents including the General Plan, the City's sewer and water system master plans, as well as other long range planning documents for stormwater drainage/treatment, recreational needs/facilities, and regional growth and transportation.

Section 3. Recommendation

Based on the findings set forth above, the Planning Commission hereby recommends that the City Council adopt a resolution and ordinance (as applicable) to:

- A. Amend General Plan Figure 2-2 (Land Use Diagram) to change the land use designation of the properties described in section 1.A above, from a combination of 'Low Density Residential,' 'Hillside Low Density Residential,' and 'Open Space,' to 'Low Density Residential' and 'Open Space,' as substantially presented in "Exhibit A" of this resolution, as well as modify other General Plan tables and charts as necessary to reflect the change in land use acreages and maintain internal consistency;
- B. Amend the General Plan text for the following goals 4-G-4 and 10-G-6, and policies 4-P-2 and 4-P-11, as shown below (new text shown with underlined font, and text proposed for deletion is shown with ~~strikethrough font~~):

[Urban Design Element]

Goal 4-G-4: Encourage development that preserves unique natural features, such as topography, rock outcroppings, mature trees, creeks, and designated major and minor ridgelines, in the design of hillside neighborhoods.

Policy 4-P-2: As part of the development review process, require design review of proposed hillside development. Encourage ~~Ensure~~ that:

- Hillside development that is clustered in small valleys and behind minor ridgelines, to preserve more prominent views of the southern hills.
- Hillside streets that are designed to allow open views by limiting the building of structures or planting of tall trees along the southern edge or terminus of streets.

Policy 4-P-11: Limit grading of hillside areas over 30 percent slope (see Figure 10-1 *[of the General Plan]*) to elevations less than 900 feet, foothills, knolls, and ridges not classified as major or minor ridgelines (see Figure 4-2 *[of the General Plan]*), unless deemed necessary for slope stability remedial grading, or installation of City infrastructure. ~~During review of development plans, ensure that necessary grading respects significant natural features and visually blends with adjacent properties.~~

[Health and Safety Element]

Goal 10-G-6: Limit development on slopes greater than 30 percent (as delineated on Figure 10-1 *[of the General Plan]*) to lower elevations, foothills, and knolls, unless it can be demonstrated that appropriate soil stability techniques can be implemented.

- C. Amend the General Plan text by deleting the following goal and policies:

Goal 2-G-33: Maintain the general character of the hill forms.

Policy 4-P-10: Minimize grading of the hillsides. Amend the City's Zoning Ordinance to allow density bonuses of 10 percent (maximum) for new hillside development that preserves 40 percent of natural hill contours.

Policy 4-P-12: Encourage terracing in new hillside development to be designed in small incremental steps. Extensive flat pad areas should be limited.

Policy 4-P-14: Preserve natural creeks and drainage courses as close as possible to their natural location and appearance.

Policy 4-P-20: Discourage lot orientation that fronts onto the cross-slope of street segments on steep grades.

Policy 4-P-22: Discourage placement of lots that allow the rear of homes to be exposed to lower elevation views.

Policy 4-P-25: During development review, encourage residential rooflines that are oriented in the same direction as the natural hillside slope.

Policy 4-P-26: Reflect the predominant colors and textures within the surrounding landscape in selection of building materials for hillside development. Roof colors should tend toward darker earth tones, so that they are less visible from adjacent or upslope properties.

- D. Amend the Zoning Map, as referenced in Pittsburgh Municipal Code, Title 18 (Zoning Ordinance) section 18.04.020, to change the rezoning of the properties described in section 1.A above, from a combination of HPD (Hillside Planned Development) and OS Districts, to RS-4-P (Single Family Residential with 4,000 square foot minimum lot size and a Master Plan Overlay) and OS-P (Open Space with a Master Plan Overlay) Districts as substantially presented in "Exhibit B" of this resolution;
- E. Approve a Master Plan Overlay District, as substantially presented in Exhibit "C" of this resolution.
- F. Approve a development agreement as substantially presented in Exhibit "D" of this resolution.

Section 4. Effective Date

This resolution shall take effect immediately upon its adoption.

On motion by Commissioner _____, seconded by Commissioner _____, the foregoing resolution was passed and adopted the 28th day of July, 2020, by the Planning Commission of the City of Pittsburg, California by the following vote:

AYES:

NAYES:

ABSTAIN:

ABSENT:

I hereby certify that the above Resolution No. 10154 was adopted by the Planning Commission of the city of Pittsburg on July 28, 2020.

KRISTIN POLLOT, AICP, SECRETARY
PITTSBURG PLANNING COMMISSION

Exhibit A
Planning Commission Resolution No. 10154

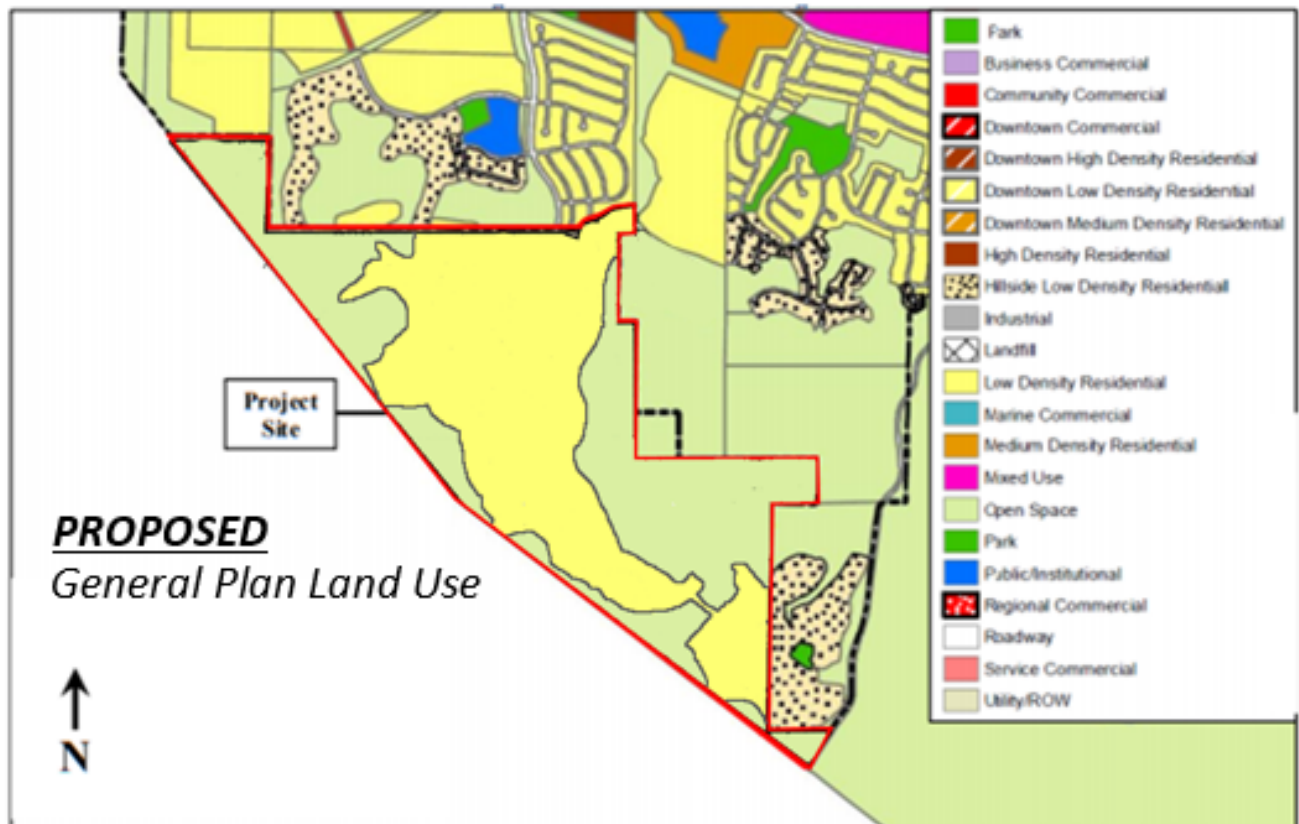
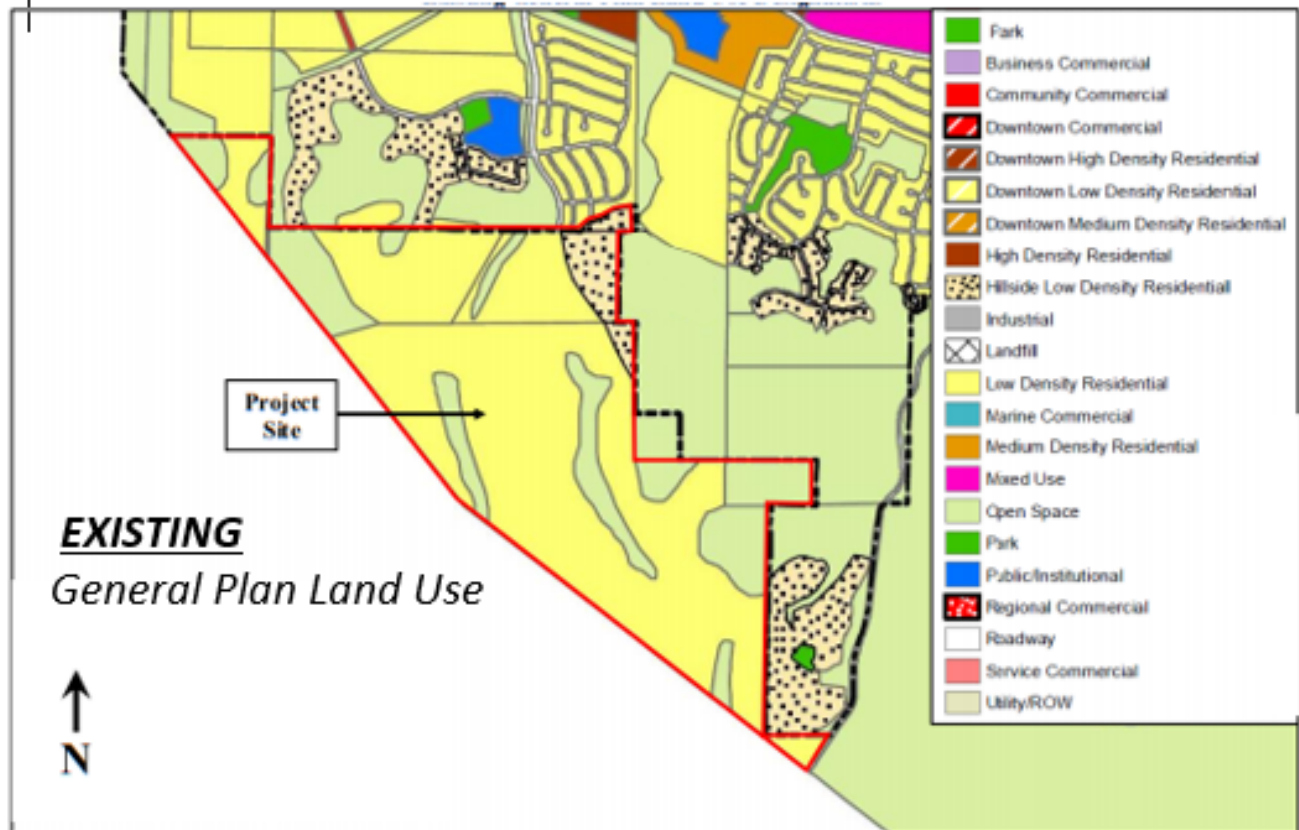
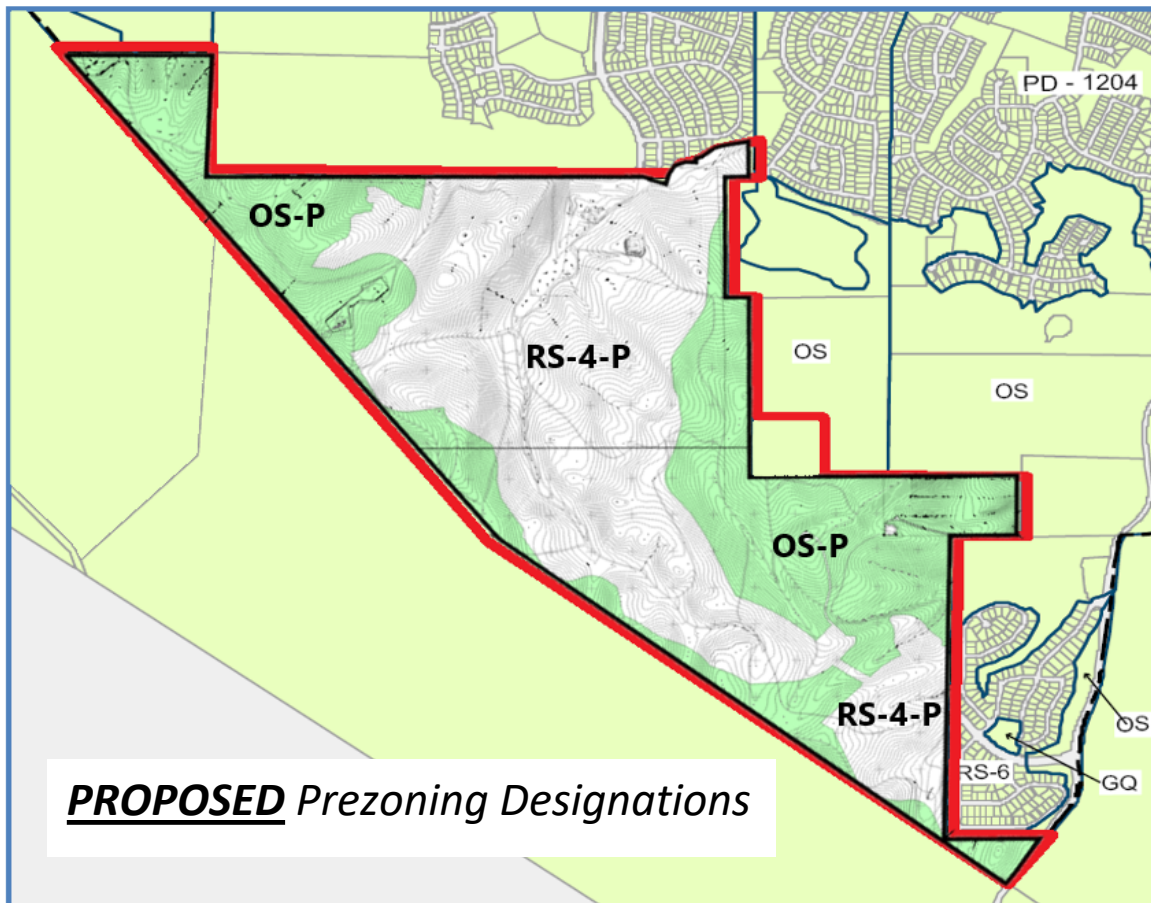
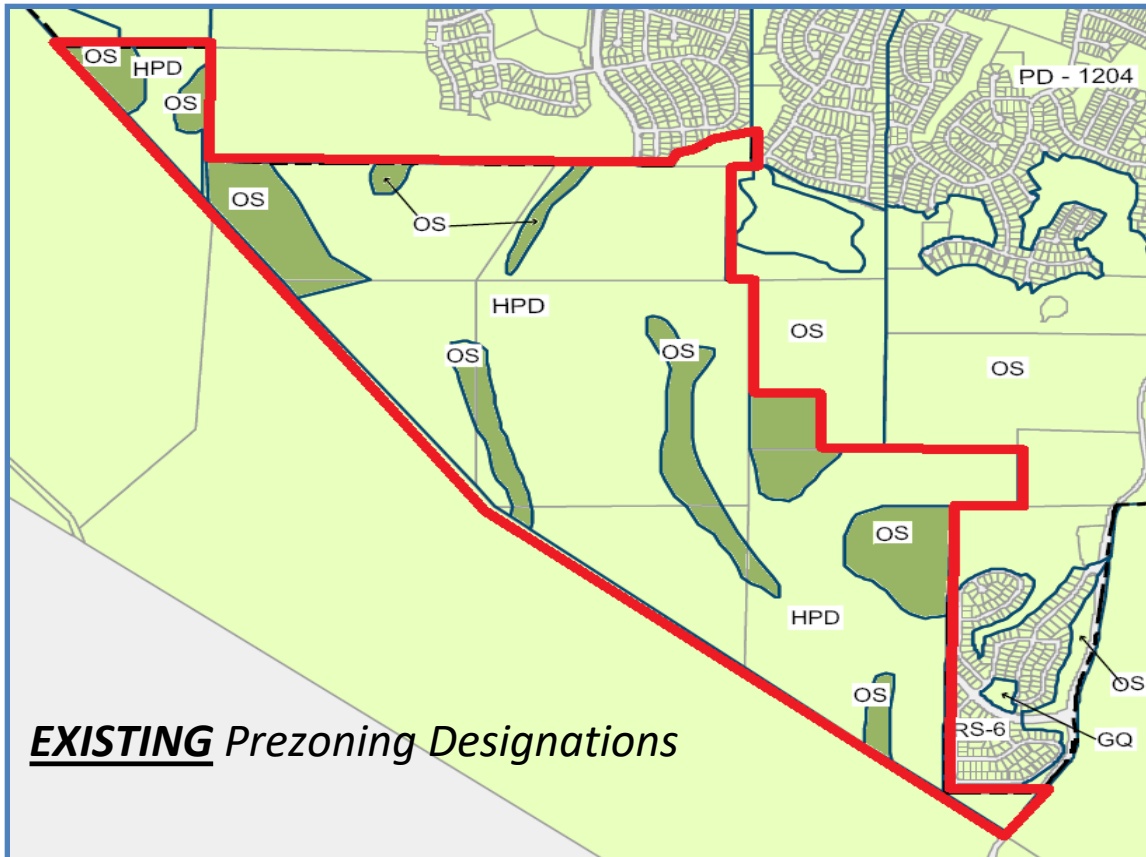


Exhibit B
Planning Commission Resolution No. 10154



Faria Property Master Plan

For Faria/Southwest Hills Reclassification from HPD and OS Rezoning Districts, to RS-4-P and OS-P Rezoning Overlay Districts

This Master Plan document is organized in the following manner:

- Section 1 describes the intent of the Master Plan Overlay District, and the area which it would govern.
- Section 2 includes a Land Use Map and defines the permitted uses, density and property development regulations.
- Section 3 defines Design Review Guidelines that will govern the master plan area and subsequent development activities.
- Section 4 outlines the project phasing and subsequent entitlements.

Section 1. Purpose, Location and Boundaries.

In accordance with Pittsburg Municipal Code (PMC), Chapter 18.72, the purpose of this master plan overlay district is to:

- a) ensure orderly planning for the development of a large, unsubdivided area in the city's sphere of influence consistent with the general plan;
- b) maintain an environmental equilibrium consistent with existing vegetation, soils, geology, topography, and drainage patterns;
- c) avoid premature or inappropriate development that would result in incompatible uses or create public service demands exceeding the capacity of existing or planned facilities; and
- d) encourage sensitive site planning and design.

The master plan overlay district is located in the southwest hills and encompasses approximately 607 acres of land (see Figure 1). The district is generally bounded by Bailey Road and the approved but not yet constructed, "Bailey Estates" subdivision to the east; the Concord City Limits and recently closed Concord Naval Weapons Station (CNWS) property to the south and west; and the San Marco and Vista Del Mar residential subdivisions (substantially developed) along the northern boundary and other open space areas along the northeastern boundary.

Upon City approval of this master plan, a request to annex the Faria property into the City limits would be filed with the Contra Costa Local Agency Formation Commission (LAFCo). Following annexation, entitlement applications would be submitted to the City for review and approval. It is anticipated that the initial entitlement process would include review of a subdivision map and design review for new construction. This

7/28/20 DRAFT

process is expected to take two or more years due to the City's discretionary review requirements and the California Environmental Quality Act (CEQA) processing requirements. Once the entitlement process is completed, the tentative subdivision map and construction documentation would be finalized for City review and approval. This process could take an additional six to twelve months. Once the construction documents are approved construction would commence. The entire process from entitlement to completion of initial construction could take approximately four years. Single family homes at San Marco (immediately north of the site) are anticipated to be fully completed by the year 2020, leaving the Faria property as the next logical place for development to occur in the Pittsburg Southwest Hills area.

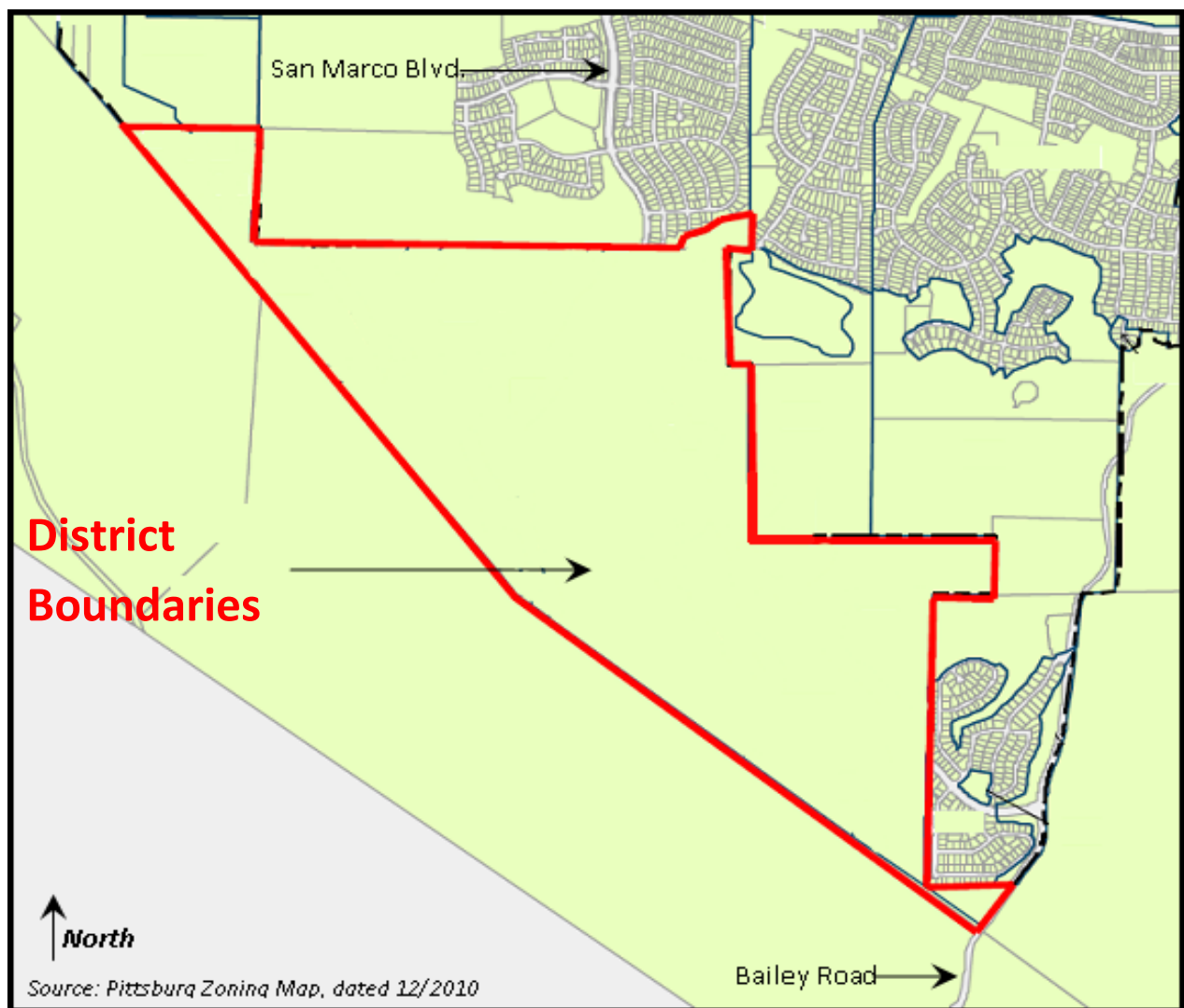


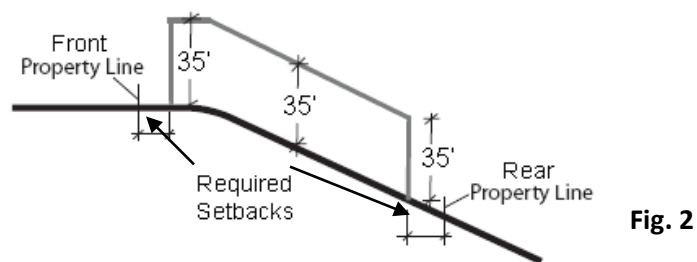
Fig 1. District Boundaries

Section 2. Land Use & Development Regulations

Proposed areas of development and areas of preservation (labeled as “Undeveloped Area”) are shown in Exhibit A of this Master Plan. The master plan area includes a total of 341 acres for residential development and 265 acres of preservation as open space. The master plan would permit development on the approximate 606-acre project site as follows:

A. Residential Development

1. Allowable Uses. The land use regulations within each of the residential neighborhoods shall be the same as RS-4 District, PMC section 18.50.010. Neighborhood serving commercial land uses, as identified in PMC 18.50.010, shall be allowable within the master plan area with a use permit.
2. Residential Density. The project site is divided into two residential areas: *(1) 209 acres at a density of 3-5 dwelling units per gross acre, and (2) 132 acres at a density of 1-3 dwelling units per gross acre*; however, in no event shall the total number of dwelling units within the master plan area exceed 1,500 units, as dictated by General Plan policy 2-P-96.
3. Property Development Regulations. Property Development Regulations set forth in PMC Schedule 18.50.105 shall apply to all residential development permitted by this master plan, except where specified below.
 - a) Height and form of main structures on sloped lots. For terraced structures built on sloped lots, a maximum height of thirty-five feet (35') is permitted. Building height is measured from any point along the finished grade (Fig. 2).



- b) Deck sizes and heights for structures on sloped lots. Where decks are provided as a primary private outdoor space, they shall be a minimum of six feet (6') in length (measured parallel to the adjacent wall of the structure) to

provide adequate usable area and to effectively break-up the mass of large structures. The support posts or columns for any deck that extend out over a downslope shall not exceed a vertical height of twelve feet (12'), as measured from the bottom of the deck to the finished grade.

- c) Flag lots. Flag lots are allowed in order to reduce environmental impacts, minimize roadway cut-and-fill, and create a better view protection. Flag lot driveways shall be designed to break up the long expanse of concrete paving with different materials, textures, and/or colors. Determination of flag lot widths and front lot lines shall be conducted in accordance with PMC 18.80.015.

4. Landscaping. In addition to the requirements of Section 18.84.300, subdivision landscaping shall comply with the following standards:

- a) Slopes adjacent to collector or arterial streets shall be landscaped and irrigated.
- b) Street trees shall be planted at a minimum of one tree every forty feet (40') along all streets. Street trees shall not be less than six feet (6') in height, as measured from the ground surface after planting.
- c) Fire resistant landscaping shall be provided and maintained within one hundred feet (100') of an exposed elevation of a structure. An exposed elevation is one or two sides of a structure that have direct exposure to unimproved open space areas, natural grasslands or agricultural lands.
- d) Codes, covenants and restrictions shall be filed and recorded with the Contra Costa County Recorder prior to the sale of any residence requiring maintenance of any fire resistant landscaping on private property.

5. Viewshed Analysis. A viewshed analysis shall be required in conjunction with any request for development to ensure impacts from nearby public vantage points, as well as neighboring properties, are minimized to the maximum extent practicable.

B. Open Space/Green Belt/Resource Conservation Area:

1. Allowable Uses.

- a) Pittsburgh-Concord Greenbelt Buffer. No development shall be permitted within the green belt area, as required by General Plan policy 2-P-91.
- b) Open Space/Resource Conservation Areas. The land use regulations for open space areas not in a state of permanent preservation shall be the same as OS District, PMC section 18.58.020. Water storage tanks, trails and/or vehicular access roadways deemed necessary to provide adequate water supply and access to residential development areas shall be permitted.

2. Property Development Regulations. Property Development Regulations set forth in PMC 18.58.030 shall apply to all open space areas.

C. Site Development Standards Applicable to All Areas:

- 1. Trails. Subdivisions shall be designed to incorporate a pedestrian trail system to interconnect neighborhoods and provide safe routes to schools, parks, and public open space within a one-mile radius of the subdivision. All trails must have public access.
- 2. Fences and walls. In addition to the requirements of Section 18.84.205-235, fences and walls shall comply with the following:
 - a) Safety fences. Where barbed wire fences are used around the perimeter of designated open space areas within a project, a second fence shall be constructed on the developed side of the barbed wire to minimize potential injury to people.
 - b) Chain link. Chain link fences are prohibited on residential lots.
 - c) Retaining walls. All retaining walls shall be engineered and constructed of reinforced concrete or masonry, or interlocking modular block.
 - d) Entrance gates. Gates to residential neighborhoods that are intended to be opened only by residents and other designated users are prohibited.

- e) Single lot security gates. Where security gates are utilized for single estate lots, materials shall be visually permeable.

3. Outdoor lighting.

- a) Residential private lighting. All lights attached to buildings shall provide a soft “wash” of light against the wall and shall not spill onto adjacent properties. Other exterior lighting shall be designed and installed in such a manner that the light source is shielded from view off the site.
- b) Street lighting. All street lighting shall use “full cutoff” luminaires which allow no direct light emissions above a horizontal plane through the luminaires’ lowest light –emitting part (See Fig.2). Light poles and fixtures shall be of an ornamental type and low-level street lighting shall be used where feasible.



Fig. 3

- 4. Other Development Regulations. All other development regulations not covered by this master plan, shall be as prescribed in PMC Title 18, where appropriate.

Section 3. Design Review Guidelines

The Design Review Guidelines provided below are generally derived from existing General Plan policies and they are grouped into six main categories for ease of reference (with the applicable policies referenced in parentheses at the end of each guideline). The policies are intended to provide guidance for future plan review and development within the master plan area.

- A. Neighborhood and Subdivision Design
- B. Circulation
- C. Grading Design
- D. Fence and Wall Design
- E. Site Design, Architectural & Building Materials
- F. Landscaping

A. Neighborhood and Subdivision Design

1. Encourage hillside 'estate' development along the outer edges of the master plan area. 2-G-5
2. Encourage the use of flag lots with common driveways in sloped areas as a means of encourage terracing of buildings and minimizing roadway cut-and-fill (Fig.4). 4-P-16

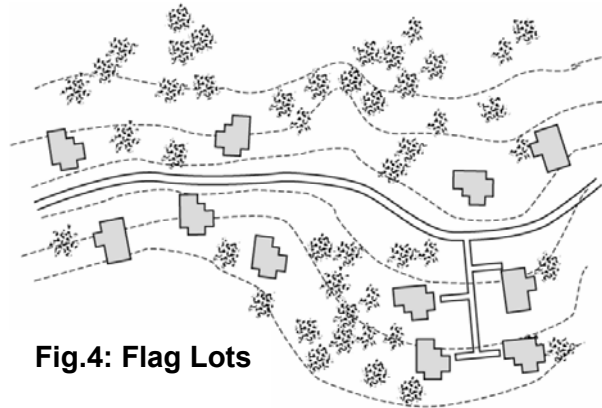


Fig.4: Flag Lots

Figure 4-4: Flag Lots

4. Design the layout of new park facilities in accordance with the natural features of the land. Where possible, preserve such natural features as creeks and drainage ponds, rock outcroppings, and significant topographic features. 8-P-9
5. Design diverse and distinctive neighborhoods that build on the patterns of the natural landscape and provide a sense of connection with surrounding uses. 4-G-17
6. Avoid placement of lots that allow the rear of homes to be viewed from public vantage points, such as parks, trails, roadways or open space areas. Where backyards may be visible from public view, provide additional screening by using natural slopes, berms and additional vegetation.
7. Vary building setbacks/orientations for new residential developments to reflect the natural contours of the hillside (Fig.5).
8. Development along the outer edges of the master plan should face outwards towards the rural landscape (preventing a solid wall of residential backyard fences). 4-P-7, 4-P-19
9. Encourage green building designs and techniques. Houses should be sited so that portions of the roofs would be suitable for solar collectors (roof should face within 15 degrees of true south).

10. Provide open space amenities such as a green belt, park and/or trails alongside ridges, creeks and/or storm drainage.
11. Utilize creeks and/or storm drainage as a shared natural community resource by incorporating them into the subdivision design and maximizing public access.
12. Protect unique environmental features, such as large rock outcroppings, mature trees, creeks and ridgelines, and incorporate them into the subdivision design. 4-G-4
13. Enhance views from individual residences by staggering lots (Fig.6).
14. Any large parcels with lot sizes greater than 10,000 square feet should be planned for those areas near ridges and in view sheds. Such lots should be designed with exclusive estate style homes that are placed to minimize grading while also providing some usable exterior living space around the house.
15. In terms of neighborhood design, reserve sites near ridges and in view sheds for unique, estate-style homes, with special effort given to provide unique design.

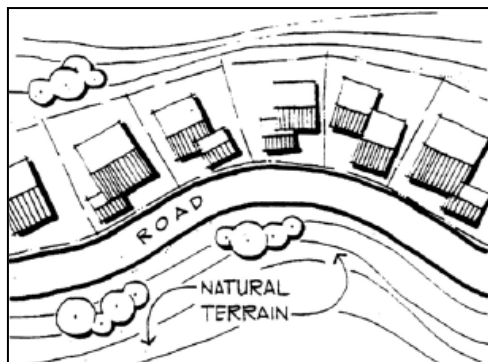


Fig. 5

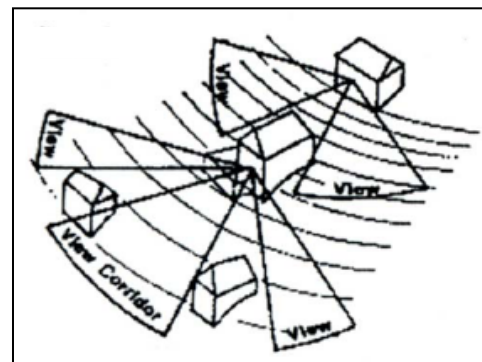


Fig. 6

B. Circulation

1. Prioritize pedestrian circulation. Develop linear parks, public trails and/or trailheads to connect pedestrians to schools, commercial centers, parks, other neighborhoods and local and regional open space areas, including those planned within the Concord Naval Weapons Station Reuse area. 8-G-3, 8-P-21, 2-P-90, 4-P-30
2. Ensure San Marco Boulevard is extended through the master plan area and through the future Bailey Estates Subdivision, to connect up to Bailey Road.

3. Maximize access for fire and emergency response personnel by providing through-roads and multiple connection points between neighborhoods. 2-P-27, 4-P-83
4. Provide on-street parking along hillside roads in parking bays where topography allows. 4-P-31
5. Allow streets with sidewalks on only one side in hillside areas where topography may be challenging. 4-P-85

C. Grading Design

1. Utilize geological hazard abatement districts (GHADs) in hillside areas to ensure that geotechnical mitigation measures are maintained over the long-term, and that financial risks are equitably shared among owners and not borne by the City. 10-P-11
2. Design new development on unstable slopes (as designated in General Plan Figure 10) to avoid potential soil creep and debris flow hazards. Avoid concentrating runoff within swales and gullies, particularly where cut-and-fill has occurred. 10-P-8
3. Limit grading of hillside areas over 30 percent slope (see General Plan Figure 10-1), to elevations less than 900 feet. 4-P-11
4. Design 'cut and fill' slopes visible to the general public to be contour rounded in order to replicate an un-graded natural terrain. Limit all engineered slopes to 3:1, unless an engineering geologist can establish that a steeper slope can perform satisfactorily over the long term. 10-P-3
5. Replant 'cut and fill' slopes with native, non-invasive species. 9-P-9, 10-P-3
6. Place manufactured slopes behind buildings where they will not be visible to the general public.
7. Design lots so that lot lines are at the top of slopes with adequate property line setback from the slope to provide for required vertical slope rounding.
8. Ensure driveways are constructed to be at least 20 feet long. For courtyard style developments without standard driveways, garage access aprons should be no longer than three feet. 4-P-16
9. Design concrete storm drainage ditches to blend with the surrounding environment by reflecting the predominant colors and textures of the surrounding

environment (examples include providing colored concrete or lining ditches with rocks or other natural materials). Screen ditches from lower elevations by building up the adjoining bench, to a slope of at least 5%.

10. Design slopes at the boundary of project areas to match the elevation of the approved grade of the adjoining property, outside of a project boundary. Where no approved map exists for an adjoining property, design projects to match the existing elevation of the adjoining property, outside the project boundary.

D. Site Design, Architectural & Building Materials

1. Permit second units (accessory dwellings) in single-family residential developments in accordance with State law. 2-P-17
2. When sloped lots are utilized, site structures so that the long axis of the building runs parallel with hillside contours (Fig.7) and the slope of roof lines and gables run parallel with the hillside slope (Fig.8).

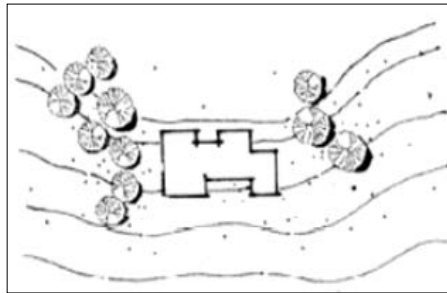


Fig. 7

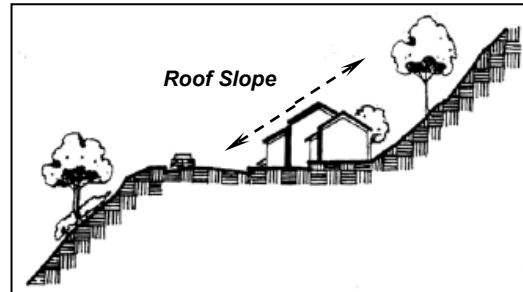


Fig. 8

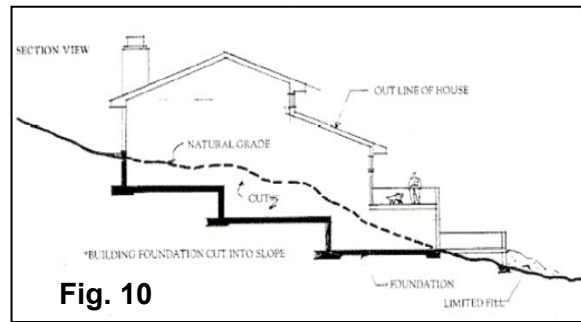
3. Design driveways serving multiple parcels (flag lots or courtyards) to break up the long expanse of concrete with different materials, textures, or colors. Encourage the use of permeable materials such as grasscrete, grass, stone, stamped concrete pavers or decomposed granite for driveways (Fig.9)



Fig. 9

4. Design buildings with natural looking materials that reflect the predominant colors and textures of the surrounding landscape.

5. Use darker earth tones for roofing colors to ensure they are less visible to adjacent or up-slope properties.
6. Encourage terrain-neutral colors for structures that are visible from major roadways or open space areas. White or light exterior colors with a reflection factor of more than sixty percent (60%) should not be used except as trim that constitutes no more than ten percent (10%) of the building surface. Codes, covenants and restrictions should be filed prior to the sale of any residence restricting future colors of structures to those in the approved color palette.
7. Avoid large expanse of flat, blank walls, especially on the downhill side of a downhill lot; this is also meant for side elevations, particularly on corner lots.
8. Break building massing and rooflines into smaller components. 4-P-3
9. 'Step' building forms to conform to site topography where appropriate. (Fig. 10)
10. Screen decks that extend out from a building with natural landscaping between the building wall and the outer skirt of the deck.



11. Provide a variety of home styles with a minimum of three exterior styles available for each model within each development phase. This is to be implemented by use of different architectural details and by varying building materials, roof slopes, window and trim treatments.
12. Large estate-style homes should include unique designs with 360-degree architecture, providing special attention to architectural details, materials and beautifying elements applied to all sides of the house, not just the front façade. Special design consideration should also be given to homes, as they could also be viewed from below and above.

E. Fence & Wall Design

1. Use natural looking building materials for fences and retaining walls in order to reflect the predominant colors and textures of the surrounding environment and to promote a rural feeling (Fig.11).



Fig. 11

2. Design fences/walls that abut designated rural open space areas to be visually permeable. Chain link fencing is discouraged. 4-P-7
3. Design fences and walls adjacent to arterials and collector streets to incorporate visual interest through variation in placement, use of planters, differing materials, use of natural materials, and modulation of the wall plane.
4. Break up retaining walls (e.g. undulating sections or landscaped screening), rather than one continuous blank wall (Fig. 12).
5. Build single retaining walls no taller than four feet (4') in height, where located within ten feet (10') of a public right-of-way. If additional height is necessary, build multiple walls (with landscaping in between) no taller than three feet (3') in height with minimum horizontal step-backs of three feet (3') between each wall segment (Fig. 13).

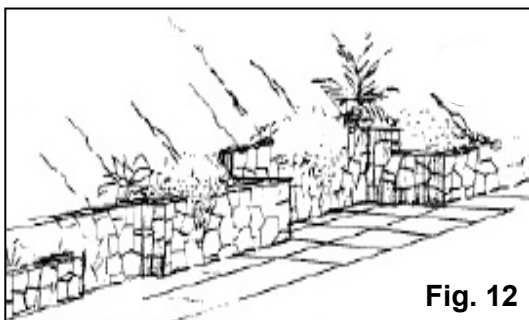


Fig. 12

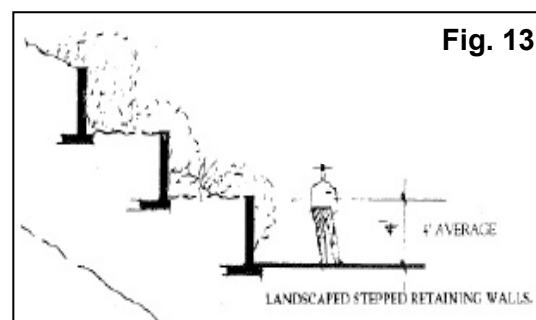


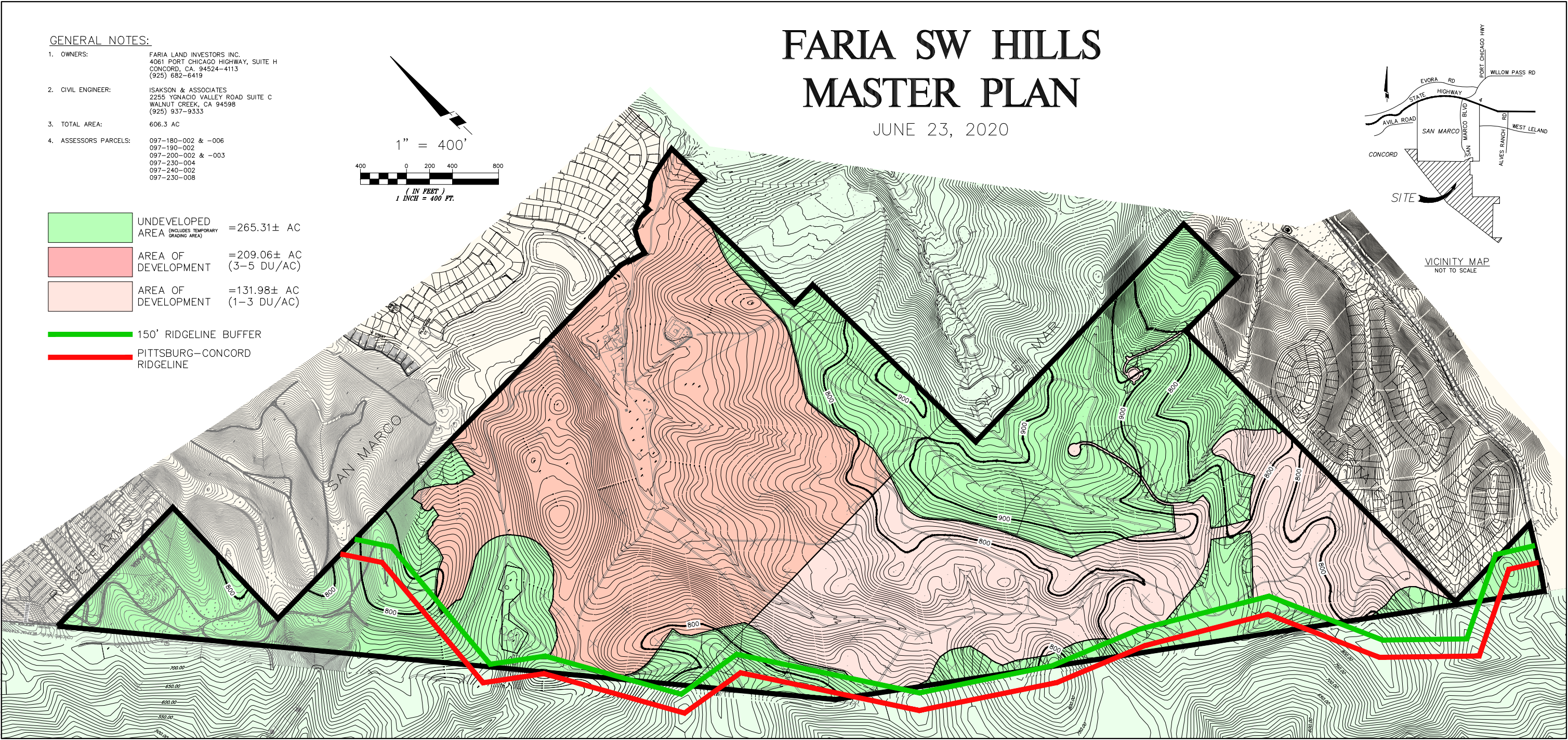
Fig. 13

F. Vegetation

1. Use irregular planting to achieve a natural and 'rural' appearance in landscape areas. 4-P-6
2. Plant native, non-invasive and fire resistant street trees, complimentary shrubbery and other vegetation along collector and arterial roadways consistent with the landscape ordinance. Street trees should be planted adjacent to the curb to provide a buffer between pedestrian sidewalks and vehicular streets. 4-P-85
3. Plant trees and other shrubbery to be individually spaced to allow for maintenance that would not form a means of transmitting fire from native growth to nearby structures. Limit the use of plants that develop large volumes of foliage and branches, deciduous bark, or dry undergrowth.

Section 4. Project Phasing & Subsequent Entitlements

After the project is annexed by the City of Pittsburgh, based on the zoning and density proposed as part of this Master Plan, the applicant would submit a Tentative Subdivision Map and detailed plans for Design Review approval to the City of Pittsburgh. It is also anticipated that a Development Agreement would be completed with the City of Pittsburgh.



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Faria Land Investors, LLC
4061 Port Chicago Hwy., Suite H
Concord, CA 94520
Attention: Albert D. Seen0, III

City of Pittsburg
65 Civic Avenue
Pittsburg, CA 94565
Attention: City Clerk

(Space Above This Line Reserved for Recorder's Use)

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF PITTSBURG, CALIFORNIA
AND
FARIA LAND INVESTORS, LLC
(Faria/Southwest Hills)**

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into as of the Effective Date between FARIA LAND INVESTORS, LLC, a California limited liability company (“**Developer**”), and the CITY OF PITTSBURG, a California municipal corporation (“**City**”), pursuant to California Government Code § 65864 *et seq.* The Effective Date is _____, 2020.

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California enacted California Government Code § 65864 *et seq.*, which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. Pursuant to California Government Code § 65865, City has adopted procedures and requirements for the consideration of development agreements (Resolution No. 89-7466). This Development Agreement has been processed, considered and executed in accordance with such procedures and requirements.

C. Developer has a legal interest in certain real property consisting of approximately 607 acres, as more particularly described in the **Exhibit A** attached hereto (the “**Property**” or “**Project**”), and as diagrammed in the attached **Exhibit A-1** (the “**Project Site**”). The Property is located within the spheres-of-influence for the City, Delta Diablo (“**Delta Diablo**”) and Contra Costa Water District (“**CCWD**”), and is within the City’s voter-approved Urban Limit Line (“**ULL**”).

D. Developer filed applications with the City requesting (1) initiation of annexation into the City, the CCWD service area and DDSD service area; (2) amendment of the pre-zoning designations of the Project Site from HPD and OS to HPD-S (Hillside Planned Development, with an Interim Study Overlay) District and OS-S (Open Space, with an Interim Study Overlay) District; (3) approval of a master plan for the site which includes a land use map corresponding to the pre-zoning designations, development regulations, design review guidelines, and a general circulation system; (4) amendment of the General Plan to modify two goals and two policies relevant to the project site, remove an existing General Plan goal and seven policies related to development in the southwest hills, and change the existing General Plan land use patterns for the project site to match the master plan land use map; and (5) approval of this Development Agreement.

E. On _____, 2020, the Planning Commission adopted Resolution No. _____ recommending approval of the request for annexation initiation, pre-zoning amendments, master plan and development agreement as set forth in Recital D above.

F. On _____, 2020, the City Council adopted Resolution No. _____ approving (1) the General Plan amendments requested for the project; and (2) a petition for annexation into the City, the CCWD service area and DDSD service area; and.

G. On _____, 2020, the City Council adopted Ordinance No. ____ approving (1) amendment of the pre-zoning designations of the Project Site from HPD and OS to HPD-S (Hillside Planned Development, with an Interim Study Overlay) District and OS-S (Open Space, with an Interim Study Overlay) District; (2) the Faria/Southwest Hills Master Plan; and (3) this Development Agreement.

The approvals and development policies described in these Recitals, together with this Agreement, are collectively referred to herein as the “**Project Approvals**.”

H. City has determined that the Project presents certain public benefits and opportunities which are advanced by City and Developer entering into this Agreement. This Agreement will, among other things, require conditions of approval and other exactions resulting in:

1. Developer’s commitment that it will comply with PMC 18.86.080 by building at least 150 rental accessory dwelling units, as set forth in Section 3.09 of this Agreement.

2. The inclusion of the Project Site into the City’s existing Community Facilities District 2007-1 and the Citywide Lighting and Landscape District No. 88-01, at no cost to the City, in order to provide funding for certain landscape and lighting costs, as set forth in Section 5.06 of this Agreement. Developer shall fund all costs associated with annexation into CFDs.

3. The expansion of the City’s Southwest Pittsburg Geologic Hazard Abatement District (the “Southwest Pittsburg GHAD”) or the establishment of a new GHAD, at no cost to City or any GHAD, to provide for, among other things, geologic hazard abatement, maintenance of detention basins, grassland maintenance, fire protection, erosion control within portions of the project Site, as set forth in Section 5.05 of this Agreement.

4. The inclusion of the Project Site into the City’s existing police services Community Facilities District 2004-1, at no cost to the City, in order to provide for police and other emergency services to the Project Site, as set forth in Section 5.07 of this Agreement.

5. The inclusion of the Project Site into the City’s existing fire services Community Facilities District 2017-1, at no cost to the City, in order to provide emergency fire services to the Project Site, as set forth in Section 5.08 of this Agreement.

6. Payment of an In-Lieu Parkland Dedication Fee, as applicable and approved by the City, in order to fund the development of public park facilities, as more particularly set forth in Section 5.09 of this Agreement.

7. Contribution to the City of the sum of One Million Dollars (\$1,000,000) for improvements to existing community facilities, including but not limited to the California Theater as more particularly set forth in Section 3.15 below.

I. In exchange for the benefits to City described in the preceding Recital G and others set forth herein, Developer will receive by this Agreement assurances that it may proceed with the long term phased development of the Project in accordance with the “Applicable Law” (defined herein), and therefore desires to enter into this Agreement.

J. The City Council, after conducting a duly noticed public hearing, has found that this Agreement is consistent with the General Plan and has conducted all necessary proceedings in accordance with the City's rules and regulations for the approval of this Agreement.

K. The City Council, on _____, 2020, at a duly noticed public hearing adopted Ordinance No. 20-_____, approving and authorizing the execution of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and obligations set forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

"Administrative Agreement Amendment" shall have that meaning set forth in Section 7.02 of this Agreement.

"Administrative Project Amendment" shall have that meaning set forth in Section 7.01 of this Agreement.

"Affordable Housing Agreement" shall have that meaning set forth in Section 3.09 of this Agreement.

"Agreement" shall mean this development agreement.

"Applicable Fees" shall have that meaning set forth in Section 3.04 of this Agreement.

"Applicable Law" shall have that meaning set forth in Section 6.03 of this Agreement.

"Buildout" shall mean the City's issuance to Developer of the last certificate of occupancy required for any portion of the Project Site.

"Certificate of Annexation" shall mean the certification of completion of annexation issued by the Executive Officer of the Contra Costa County Local Agency Formation Commission.

"CEQA" shall mean the California Environmental Quality Act.

"Changes in the Law" shall have that meaning set forth in Section 6.07 of this Agreement.

"City" shall mean the City of Pittsburg, a California municipal corporation.

"Complaining Party" shall have that meaning set forth in Section 10.01 of this Agreement.

"Day" or **"days"** shall mean calendar day or calendar days.

“Default Notice” shall have that meaning set forth in Section 10.01 of this Agreement.

“Defaulting Party” shall have that meaning set forth in Section 10.01 of this Agreement.

“Deficiencies” shall have that meaning set forth in Section 9.02(a) of this Agreement.

“Developer” shall mean Faria Land Investors, LLC, a California limited liability company.

“Effective Date” shall have that meaning set forth in Section 2.01 of this Agreement.

“Fair Share” shall mean the proportionate share which the Developer, or other party, shall bear of the improvement, facility, or structure which is providing service to the Project, Developer or other party. The term “fair share” or similar terms used herein are not intended by the parties to this Agreement to impose a different or higher burden of proof on the City as to its fees, charges, or other exactions, than exists under applicable State or federal law.

“Funding Mechanisms” shall have that meaning set forth in Section 3.08 of this Agreement.

“General Plan” shall mean the local planning document adopted by the City of Pittsburg pursuant to Government Code section 65300 et seq., as may be amended from time to time.

“HCP” shall mean the East Contra Costa County Habitat Conservation Plan.

“Judgment” shall have that meaning set forth in Section 9.02(a) of this Agreement.

“LLD” shall have that meaning set forth in Section 5.06 of this Agreement.

“Non-Assuming Transferee” shall have that meaning set forth in Section 8.03 of this Agreement.

“Notice of Compliance” shall have that meaning set forth in Section 8.04 of this Agreement.

“Periodic Review” shall have that meaning set forth in Section 10.03 of this Agreement.

“Police Services District” shall have that meaning set forth in Section 5.07 of this Agreement.

“Project” shall have that meaning set forth in Recital D of this Agreement.

“Project Approvals” shall have that meaning set forth in Recitals A through G of this Agreement.

“Project Site” shall have that meaning set forth in Recital C of this Agreement.

“Public Improvements” shall have that meaning set forth in Article XI of this Agreement.

“Subsequent Approvals” shall mean those certain other land use approvals, entitlements, and permits other than the Project Approvals that are necessary or desirable for the Project. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, tentative subdivision maps, final subdivision maps, design review approvals, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, PD Plans, rezonings, development agreements, permits, subdivisions and any amendments to, or repealing of, any of the foregoing.

“Term” shall have that meaning set forth in Section 2.02 of this Agreement.

“Transfer Agreement” shall have that meaning set forth in Section 8.02(a) of this Agreement.

If any capitalized terms contained in this Agreement are not defined above, then any such terms shall have the meaning otherwise ascribed to them in this Agreement.

ARTICLE II EFFECTIVE DATE; TERM

Section 2.01 **Effective Date**. This Agreement shall become effective upon the date the ordinance approving this Agreement becomes effective (the **“Effective Date”**).

Section 2.02 **Term**. The term of this Agreement shall commence upon the Effective Date and continue for a period of thirty-five (35) years (the **“Term”**).

ARTICLE III OBLIGATIONS OF DEVELOPER

Section 3.01 **Obligations of Developer Generally**. The parties acknowledge and agree that the City’s agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer’s agreement to perform and abide by its long term covenants and obligations, as set forth herein. As material consideration for the long-term assurances and vested rights provided by this Agreement and as a condition of approval to one or more of the Project Approvals, Developer agrees to each of the following:

Section 3.02 **Facility Reserve Charges**. Developer agrees to pay City’s Facility Reserve Charges (“FRC”) as set or modified by the City Council from time to time. Developer shall reserve the right to review any FRC Fee Study conducted by the City.

Section 3.03 **Water Infrastructure**. Developer shall comply with the current Water System Master Plan, as may be amended from time to time. Construction timing of required facilities shall be determined by the City Engineer.

Section 3.04 **Applicable Fees**. City may levy development fees and charges during the term of this Agreement relative to the development of the Project Site which are in force and effect as of the Effective Date, as more particularly described and according to the payment schedule set forth on **Exhibit B** (**“Applicable Fees”**). Unless otherwise provided in this

Agreement, no development fees, or charges, or categories thereof, shall be imposed on the Project other than those fees (including categories within such fees), and charges identified as Applicable Fees on **Exhibit B**, which exhibit shall exclusively govern the Applicable Fee payment schedule. The parties agree that any and all Project development fees, charges or exactions related to schools, fire prevention, water, sewer, stormwater, and storm drainage facilities, which are to be paid by Developer directly to third-party governmental agencies, are not subject to or within the scope of this Agreement whether such third party charges exist or are subsequently imposed by such third parties, whether directly upon Developer or through City. This provision shall not be construed to benefit any Non-Assuming Transferees, as such term is defined in herein.

Section 3.05 **Applicable Fee Adjustments.** Developer shall pay fees and charges consistent with Section 3.04 above, and the applicable adjustments currently authorized with such fees, and as modified from time to time by the City, whether such adjustment or modification is an increase or decrease. Developer retains the right to challenge the imposition of any new fees not referenced in this Agreement or the modification, amendment or adjustment of the fees set forth in Sections 3.02, 3.03 and all Applicable Fees pursuant to Government Code § 66000 *et seq.*, not already authorized by ordinances, resolutions or policies in place at the time of this Agreement's execution. Should the City Council approve a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees.

Section 3.06 **City Local Traffic Mitigation Fee.** Developer shall pay the City Local Traffic Mitigation Fee (LTMF), which fee is necessary to finance unmet City traffic improvement needs in the amount in effect as of the Effective Date and subject to adjustment in accordance with Resolution No. 07-10917 with credit for certain improvements constructed by Developer per Section 4.04 below. If the City Council approves a new AB 1600 fee study and/or authorize a decrease in any of the Applicable Fees during the term of this Agreement by ordinance or by resolution, Developer shall have the option, at its sole discretion, to pay the lower fee, as may be adjusted by the applicable CPI or ENR, unless otherwise bound by separate contract or memorandum of understanding with City. In no event shall Developer receive retroactive adjustments for lower fees..

Section 3.07 **Regional Traffic Fee.** Developer shall pay the ECCRFA Regional Transportation Development Impact Mitigation Fee (PMC Chapter 15.102; the "RTDIM") amount in effect when the Developer obtains a Building Permit. The RTDIM will be automatically increased or decreased on January 1 of each year based on the percent change in the Engineering News Record Construction Costs Index-San Francisco Bay Area for the one year period ending Sept. 30 of the preceding year. Developer shall pay the fees prior to issuance of a Building Permit. If no Building Permit is required, then Developer shall pay the fees at a time consistent with PMC Section 15.102 in the amount in effect when the Project commences pursuant to PMC Section 15.102.

Section 3.08 **Fees, Assessments and/or Taxes to be Paid by Developer.** Developer agrees to pay its fair share of any levies imposed by any assessment district,

landscaping and lighting district, community facilities district, tax-exempt financing mechanisms, or other funding mechanisms related to public safety; traffic; sewer; water; fire; the prevention, mitigation, abatement, or control of geologic hazards; or other infrastructure improvements (including, without limitation, design, acquisition, construction and maintenance costs) (collectively, **"Funding Mechanisms"**) within the Project Site, provided that such Funding Mechanism is referenced herein and/or was legally created pursuant to applicable law.

Section 3.09 **Affordable Housing.** Developer shall construct a minimum of 150 rental accessory dwelling units within the Project. A covenant shall be recorded limiting the amount of rent that may be charged for these accessory dwelling units, consistent with the terms and conditions set forth in the affordable housing agreement. Prior to the City's issuance of a certificate of occupancy Developer agrees to enter into an affordable housing agreement with the City (the **"Affordable Housing Agreement"**) attached as **Exhibit C** which further memorializes the provisions of this Section 3.09 and is consistent with applicable law, including Pittsburgh Municipal Code Chapter 18.50. Location of all required accessory dwelling units within a phase shall be finalized prior to the City's approval of such final subdivision map for such phase of the Project. Each accessory dwelling unit shall be at least three hundred (300) square feet in size and 200 cubic feet of storage and contain a fully functional kitchenette (including undercabinets with countertop, one (1) refrigerator, one (1) two or four burner range, one (1) oven, one (1) sink with garbage disposal and electrical receptacles for small appliances), as well as a separate closet for the bedroom area, a separate full bathroom and a separate entrance. Developer agrees that the accessory dwelling units referenced in this Section shall not be built or otherwise allowed on adjoining lots without the prior written approval of the City Manager. City agrees that Developer shall not be required to pay any additional fees (building permit, sewer, water, traffic fees, etc.) associated with any accessory dwelling units under 750 square feet. In accordance with PMC 18.86.020(D)(1), construction of the 150 accessory dwelling units shall fully satisfy the project's inclusionary housing obligations.

(a) **Affordable Housing Agreement.** The Affordable Housing Agreement shall establish provisions to implement the affordable housing requirements within this Agreement and shall include, but not be limited to, implementation and monitoring provisions to ensure compliance with municipal law related to affordable housing. The agreement shall include provisions for the reasonable reimbursement of costs to the City for the administration and monitoring of the agreement.

(b) **Inclusionary Housing Ordinance.** Notwithstanding any provision of this Agreement, in the event that the City has rescinded its previously adopted affordable housing ordinance and not replaced it with another affordable housing or similar ordinance, or such ordinance has been declared illegal, Developer shall not be obligated to comply with the provisions for affordable housing set forth in this Agreement. In the event, prior to or during the development of the Project, the City amends or replaces or eliminates its affordable housing ordinance which would result in a reduction in the number of accessory dwelling units Developer is obligated to construct, then the Affordable Housing Agreement shall be modified to provide for an equivalent reduction in the number of accessory dwelling units required to be constructed in the Project or elimination of the requirement.

Section 3.10 **C.3 Facilities.** The Developer shall submit a complete Stormwater Control Plan and Report for each phase of the Project. Developer may construct or participate in the funding of offsite C.3 facilities on land owned by the City or others, if available, provided the construction of such off-site facilities is consistent with the then current Regional Water Quality Control Board permit and approved by the City Engineer. The C.3 treatment facility(ies) shall be adequately sized to treat the stormwater runoff from the associated drainage management areas, and supporting calculations and plans shall be submitted to the Engineering Division for review prior to issuance of a grading permit. In the event it is determined that the runoff cannot be treated off-site, the Developer shall treat the runoff, or a portion thereof, onsite at a facility adequately sized and designed to meet the treatment and flow control needs. The treatment facility(ties) shall be constructed with each respective phase of the project, as approved by the City Engineer in writing. Should the C.3 regulations be revised in the future such that the size of the facilities may be decreased, Developer shall have the right to reduce the size of the proposed facilities following written approval by the City Manager and may seek entitlements to develop the eliminated property(ies). Any allowed offsite facilities constructed for compliance with C.3 provisions shall be completed prior to the final inspection or certificate of occupancy required for the last phase of construction.

Section 3.11 **Security Improvements.**

(a) Developer shall pay to the City the actual cost incurred by the City (not to exceed an amount equal to One Hundred Thousand Dollars [\$100,000] increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2021 reflecting 2020 increases) towards funding the acquisition and installation of security camera(s) in the southwest Pittsburg area. The security cameras will be installed at the discretion and under the supervision of the City's Police Chief. Developer shall pay such costs within thirty (30) days of receipt of invoice.

(b) Developer shall install a basic home security system in the Project homes (defined herein as, at a minimum, entry sensors on the first-floor windows and doors, as well as any required appurtenances necessary for proper function, including but not limited to base stations and keypads). Developer shall provide one year of professional monitoring service to new homeowners. The monitoring service shall be at the election of the new homeowner.

Section 3.12 **School Facilities Impact Mitigation.** Developer shall pay in lieu school impact fees in accordance with Government Code §§ 65995 et seq.

Section 3.13 **Installation of Full Trash Capture Devices.** Developer shall install full trash capture devices in all inlets within the project site that discharge directly to the City's storm drain conveyance system without prior treatment. The full trash capture device installed shall be chosen from the State Water Board's approved list of devices.

Section 3.14 **Single-story homes.** Developer agrees that at least five percent (5%) of the single-family homes within the Project shall be single story. The design and amenities of the single-story homes shall be consistent with the remaining homes in the Project.

Section 3.15 **Community Benefit Payment.** Prior to the issuance of the 100th development permit (including but not limited to grading and building permits), or within two (2) years of issuance of the first development permit, whichever comes first, Developer shall contribute the sum of One Million Dollars (\$1,000,000) to the City for improvements to existing community facilities including, but not limited to, the California Theater. The location and scope of improvements shall be at the sole discretion of the City.

Section 3.16 **Monument Signs.** Within three hundred and sixty (360) days from the issuance of the Certificate of Annexation, Developer shall, at a cost not to exceed Fifty Thousand Dollars (\$50,000.00), install decorative non-electronic monument signs identifying entry into the City of Pittsburg at the following locations: (i) Southside of State Route 4, west of the San Marco Villas apartments; (ii) East side of Bailey Road, on APN 092-030-011; and (iii) East side of Kirker Pass/Railroad Avenue, north of the Pittsburg City limits. The City shall determine the final design and location of the monument signs in its sole discretion and shall procure the land (fee title or easement) where the monument signs will be installed, if necessary. The City shall promptly review and process the proposed signage plans submitted by Developer and agrees that such signs shall all be similar in size and style. The City shall reserve the right to dedicate the entire amount to the installation of fewer than the three signs noted above, and neither the Developer or City shall be obligated to install any further signage.

Section 3.17. **Interconnection Point.** Upon receipt by Developer of a written notice from the City of an interconnection point near the Project, Developer shall install the necessary conduit within the Project joint trenches to allow for the installation of necessary electrical infrastructure to be installed, operated and maintained by the Pittsburg Power Company (PPC). All electrical service to the Project will be provided by the PPC. Nothing herein shall limit or delay Developer from proceeding with development of its Project.

Section 3.18. **Enhanced Infrastructure Financing District ("EIFD").** City may, at its sole discretion, pursue the establishment of an EIFD within the City as a mechanism for, among other things, funding infrastructure improvements within the City that serve the Project and may also serve other properties. Developer agrees to use its best reasonable efforts to support the City's establishment of an EIFD provided such EIFD does not increase the applicable tax rate for the Project.

Section 3.19. **Establishment of maintenance or similar types of districts.** Upon establishment by the City of maintenance or similar types of districts to help fund the maintenance of Project specific infrastructure, Developer shall agree to annex any then undeveloped portion of the Project into said districts. Nothing herein shall prohibit Developer from reviewing, commenting on or opposing the proposed assessments associated with the establishment of such districts.

Section 3.20 **Complete Streets.** Developer shall ensure all improvements to public streets are developed and designed pursuant to Contra Costa Transportation Authority's (CCTA) "complete streets" guidelines.

Section 3.23 **Mitigation Measures.** Developer shall implement, at its sole cost, all mitigation measures contained within the final Mitigation Monitoring and Reporting Program (“MMRP”) adopted by the City Council on _____.

ARTICLE IV OBLIGATIONS OF CITY

Section 4.01 **Obligations of City Generally.** The parties acknowledge and agree that Developer’s agreement to perform and abide by its covenants and obligations set forth in this Agreement, including Developer’s decision to process the siting of the Project in the City, is a material consideration for City’s agreement to perform and abide by the long term covenants and obligations of City, as set forth herein.

Section 4.02 **Availability of Public Services.**

(a) **General.** To the extent permitted by law and consistent with its authority, City shall reserve such capacity for water services as may be necessary to serve the Project. This reservation of water infrastructure capacity shall be assured for the Term to the extent consistent with applicable law.

(b) **Construction Water.** City shall make construction water available to the Project allowing the Project access to the City’s existing water supply infrastructure, at a location reasonably determined by the City, at Developer’s cost and on those terms and conditions and charges customarily applied by City to similar projects consistent with City standards. Developer shall provide backflow prevention for all points of connection to the City’s potable supply system and the volume of water consumed shall be tracked with the use of a City-issued hydrant meter. City shall also allow Developer to install such temporary construction water pipelines and related infrastructure as reasonably necessary to provide construction water to the Project site for Developer’s use in any and all Project grading and construction operations, as long as such water is unrelated to potable use.

Section 4.03 **Developer’s Right to Rebuild.** City agrees that Developer, in Developer sole’s discretion, may renovate or rebuild the Project within the Term of this Agreement should it become necessary due to natural disaster, changes in seismic requirements, force majeure, acts of terrorism, or damage to work in progress by reason of fire, floods or other casualties. Any such renovation or rebuilding shall be subject to the square footage and height limitations vested by this Agreement, and shall comply with the Project Approvals, the building codes existing at the time of such rebuilding or reconstruction, and the requirements of CEQA and this Agreement.

Section 4.04 **Reimbursement of Infrastructure Costs.**

(a) **Reimbursement.** Unless otherwise provided for herein, to the extent Developer incurs costs related to the planning and construction of traffic infrastructure, water delivery infrastructure, the off-site water tank, pump station, sewer infrastructure or other public infrastructure required by City or this Agreement for the Project that exceed the Project’s fair share obligation for such infrastructure, City shall reimburse Developer for the City’s portion of such costs (including any management fees provided for in this Agreement), subject to City’s prior verification through inspection of the construction that is subject to such reimbursement

and upon final acceptance of the infrastructure by the City. This reimbursement shall be paid within sixty (60) days after City's final acceptance or at such other time as mutually agreed upon in writing by the parties. Developer shall be entitled to a management fee of five percent (5%) for City's share of approved infrastructure costs, including but not limited to design and special inspection costs. The management obligations of Developer hereunder shall include contracting and managing the construction of the infrastructure, retaining copies of records, photographs and "as builts" for the improvement(s) as well as attending meetings and providing necessary reports as reasonably requested by City.

(b) City's Authorization of Reimbursement. Notwithstanding any other provision of this Section, or of this Agreement, or of VTM provisions, City shall not be responsible to reimburse or credit Developer for any costs, including as referenced in Section 4.04(a) herein, unless prior to Developer incurring any costs for which Developer will request reimbursement from City, Developer shall first provide written documentation as to the work to be performed, the estimated costs thereof, including a not-to-exceed cap, and such other details as reasonably requested by the City Manager, and the City Manager approves the proposed costs and related work. If the City Manager fails to respond within thirty (30) days of its receipt of such estimated costs, Developer shall provide a second written notice to the City Manager and to the City Engineer, if neither responds within thirty (30) days of the City's receipt of the second request, the request shall be deemed approved. The City Manager shall have the discretion to require Developer to obtain competitive bids on any work for which Developer may request reimbursement or credit from the City where the total cost (not just the City's share) of that work is One Hundred Thousand Dollars (\$100,000) or more. City shall also have the opportunity to inspect any and all infrastructure during its construction, as well as to review any work product for which Developer requests reimbursement or credits. If mutually agreed by the parties in writing, any reimbursement due Developer pursuant to this Agreement may be satisfied by City in the form of credits, which can actually be used by Developer to offset Developer's payment of any Applicable Fees. In the event there are not enough credits to fully satisfy the reimbursement due to Developer, and subject to the terms of the mutual agreement between the parties referenced in the prior sentence, City shall reimburse Developer within thirty (30) days of invoicing.

Section 4.05 **Park In-Lieu Fees.** Developer and City agree that the park in-lieu fee amount will be Ten and 89/100ths Dollars (\$10.89) per square foot (unless City adopts a lower fee in which case the lower fee shall apply), increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2021 reflecting 2020 increases.

ARTICLE V COOPERATION — IMPLEMENTATION

Section 5.01 **Processing Application for Subsequent Approvals.** The parties agree that all Subsequent Approvals shall be processed by City in a manner consistent with the following provisions:

(a) Standard of Review. By adopting the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its discretionary authority in

considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed tools to implement those final policy decisions and shall be issued by City so long as they comply with this Agreement and Applicable Law, as defined below, and are not inconsistent with the Project Approvals as set forth above, and meet the intent and comply with any City adopted Designed Guidelines, as applicable. To the extent permitted by law, City shall not use its discretionary authority in considering these Subsequent Approval applications to revisit or frustrate the policy decisions or material terms reflected by the Project Approvals. Developer agrees that development under this Agreement shall comply with provisions reflected in Uniform Codes (whether building, fire, plumbing, or other applicable uniform codes) which may be adopted subsequent to the Effective Date of this Agreement.

(b) Basis for Denial. City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or Applicable Law, defined below, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or Applicable Law, or as is necessary to make this Subsequent Approval consistent with the Project Approvals. If City denies any application for a Subsequent Approval, City shall specify in writing the reasons for such denial and may suggest a modification which would be approved by City.

Section 5.02 Timely Submittals by Developer. Developer acknowledges that City cannot expedite processing of the Subsequent Approvals until Developer submits complete applications on a timely basis. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other necessary materials as set forth in the Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Approvals consistent with this Agreement.

Section 5.03 Timely Processing by City. Upon submission by Developer of all appropriate applications and processing fees for any Subsequent Approval, City shall promptly and diligently commence and complete all steps necessary to act on the Subsequent Approval applications including, without limitation, (i) providing at Developer's expense and subject to Developer's request and prior written approval, reasonable overtime staff assistance and/or staff consultants for planning and processing of each Subsequent Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such Subsequent Approval application. If Developer elects to request and approve the use of overtime staff assistance or staff consultants for planning and processing of any Subsequent Approval pursuant to this Section 5.03, Developer's reimbursement to City for such services shall be made in amount equal to City's actual costs of providing such services, in accordance with standard City practice.

Section 5.04 **Other Government Permits.** At Developer's sole discretion and in accordance with Developer's construction schedule, Developer shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate with Developer in its efforts to timely obtain such permits and approvals and shall, from time to time, at the request of Developer, use its best efforts to ensure the timely availability of such permits and approvals.

Section 5.05 **Southwest Hills Geologic Hazard Abatement District (GHAD).** Developer agrees to take all steps necessary to either expand the existing Southwest Pittsburgh Geologic Hazard Abatement District (the "Southwest Pittsburgh GHAD") or to establish a new GHAD, at no cost to City or to the GHAD, to provide for, among other things, geologic hazard abatement, maintenance of detention basins, grassland maintenance, fire protection, and erosion control within portions of the Project Site. City shall cooperate with Developer in these efforts. Unless otherwise required by law, the parties intend that the Project Site will be assessed by the Southwest Pittsburgh GHAD or a new GHAD upon the respective GHAD's acceptance of the GHAD Area identified in the Project Approvals.

Section 5.06 **Lighting and Landscaping District.**

(a) Developer agrees to annex the Project Site into the City's existing Lighting and Landscaping District, as established pursuant to City Resolution No. 88-7324 ("**LLD**"), as well as the City's Community Facilities District 2007-1 for park maintenance and the City's Community Facilities District 2016-1 for maintenance of C.3 facilities and, to the extent permitted by law, that the Project shall be assessed in a manner consistent with the provisions herein.

(b) Developer agrees that the base assessment applies to the Project and is subject to increase, provided any such increase of the base assessment imposed uniformly or similarly situated properties by City in a manner consistent with State law. Developer further agrees that the base assessment shall be levied upon recordation of each of the Project's final maps. The parties agree that the base LLD assessment described herein shall finance, among other things, the maintenance of any and all landscape improvements and the maintenance of the parks.

Section 5.07 **Police Services CFD.** Developer agrees to annex the Project Site into the City's existing police services Community Facilities District 2004-1, as adopted pursuant to Resolution No. 04-10071 (the "**Police Services District**") at no cost to the City, in order to provide for police and other emergency services to the Project Site. This process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, before filing the first final map on the Project. Each legal residential lot located on the Project Site will be required to pay the levy by the Police Services District no earlier than the issuance of a building permit for such lot.

Section 5.08 **Fire Services CFD.** Developer agrees to annex the Project Site into the City's existing fire protection services Community Facilities District 2017 1, as adopted pursuant to Resolution No. 17-13311 (the "**Fire Facilities and Fire Safety and Emergency Services District**") at no cost to the City, in order to provide for fire protection services in the

City for the Contra Costa Fire Protection District and acquisition or replacement of equipment primarily situated in the fire stations located in the City. This annexation process shall be completed, to the reasonable satisfaction of the City Manager and the City Attorney, for each phase of the development after the recordation of a final map for such phase and prior to issuance of the first building permit in such phase. Each legal residential lot located on the Project Site will be required to pay the levy by the Fire Services District no earlier than the issuance of a building permit for such lot.

Section 5.09 **Parkland Dedication In-Lieu Fee.** Developer shall meet their Park Dedication requirements with either a dedication of land or payment of an in-lieu fee, or combination of both in accordance with PMC 17.32.020 Park Dedication.

Section 5.10 **Assessment Districts or Other Funding Mechanisms.**

(a) City understands that City's long term assurances to Developer concerning fees, taxes and assessments related to the Project are a material consideration for Developer agreeing to process the siting of the Project in its present location and to pay the fees, taxes and assessments described in this Agreement. City shall retain the ability to initiate or process applications for the formation of new assessment districts or other Funding Mechanisms, as defined in Section 3.08 of this Agreement, covering all or any portion of the Project site. Notwithstanding the foregoing, Developer retains all its rights to oppose the formation or proposed assessment of any new assessment district, Funding Mechanism, or any and all increases thereto, or to request or pursue assessment credits or reductions, unless otherwise provided for herein or unless such assessment, Funding Mechanism or related increases are in place and legally effective as of the date of this Agreement's Effective Date.

(b) At the request of Developer, City shall cooperate in the formation of, or annexation to, those assessment districts, landscaping and lighting districts, community facilities districts, tax-exempt financing mechanisms, or other Funding Mechanisms that Developer and City determine are needed to fund infrastructure improvements and to ensure the orderly development of the Project, at no cost to the City. City shall diligently and expeditiously process applications by Developer necessary to establish such Funding Mechanisms as long as (i) the application complies with law, (ii) is consistent with City's standards, and (iii) provides for a lien to value ratio and other financial terms that are reasonably acceptable to City, and which will result in no commitment of City. City shall diligently seek to sell any bonds to be issued and secured by such assessments upon the best terms reasonably available in the marketplace. Any and all costs associated with this Section shall be borne and/or advanced by Developer.

Section 5.11 **Warranty Bonds.** Developer agrees that every infrastructure improvement dedicated to City (except landscaping, unimproved real property or open space dedications) pursuant to this Agreement shall be accompanied by a one (1) year warranty bond in a form and in an amount, and with a surety acceptable to City, or otherwise as determined in the applicable Subdivision Improvement Agreement.

ARTICLE VI STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT

Section 6.01 **Vested Right to Develop.** Developer shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), the Subsequent Approvals (as and when issued), and amendments thereto as shall, from time to time, be approved pursuant to this Agreement. Nothing in this Section 6.01 shall be deemed to eliminate or diminish the requirement of Developer to obtain any required Subsequent Approvals.

Section 6.02 **Permitted Uses Vested by This Agreement.** The permitted uses of the Project Site; the density and intensity of use of the Project Site; the maximum height, bulk and size of proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued (but not in limitation of any right to develop as set forth in the Project Approvals), the Subsequent Approvals.

Section 6.03 **Applicable Law.** “**Applicable Law**” shall mean the existing rules, regulations, official policies, standards and specifications governing permitted uses of the project site; governing density; and governing design, improvements, and construction standards and specifications applicable to the Project and Project site as set forth in this Agreement and the Project Approvals, and in force and effect on the Effective Date of this Agreement. However, this Agreement and this Section shall not be construed to prevent the City, in any subsequent actions applicable to the Project Site, from applying any new rules, regulations, official policies, standards, and specifications that do not conflict with those rules, regulations, official policies, standards, and specifications existing as of the Effective Date of the Agreement.

Section 6.04 **Uniform Codes.** Notwithstanding any other provision of this Agreement, City may apply to the Project Site, at any time during the Term, the then current Uniform Building Code and other uniform construction codes as properly modified by City and uniformly applied on a citywide basis, and City’s then current design and construction standards for road and storm drain facilities. In no event shall any such uniform code or standard be adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.

Section 6.05 **Moratorium and Conflicting Enactments.** To the extent consistent with State Law, if any ordinance, resolution or other measure is enacted, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement which would otherwise affect the timely development of the Project on all or any part of the Project Site, City agrees that such ordinance, resolution or other measure shall not apply to the Project, the Project Site, this Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the term of this Agreement, unless the building moratorium is imposed as part of a declaration of a local emergency or state of emergency as defined in Government Code Section 8558. Developer

reserves the right to challenge in court any City action or inaction which Developer believes is in conflict with Applicable Law or this Agreement.

Section 6.06 Life of Subdivision Maps, Development Approvals, and Permits.

To the extent consistent with Applicable Law, the term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the duration of this Agreement, including any extensions. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable development moratorium (including, but not limited to, a water or sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which any applicable court order or other legal requirement prevents the processing of any Subsequent Approval or prevents any Project development activities

Section 6.07 State and Federal Law. As provided in California Government Code § 65869.5, if any state or federal laws or regulations, enacted after this Agreement's Effective Date prevent or preclude compliance with one or more provisions of this Agreement ("**Changes in the Law**"), such provision of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article V and Section 10.05. Not in limitation of the foregoing, nothing in this Agreement shall preclude City from imposing on Developer any fee specifically required by State or Federal laws and regulations.

Section 6.08 Timing of Project Construction and Completion.

(a) Project Phasing. The Project may be built in phases in response to then-existing market conditions over the Term of the Agreement. Except as otherwise specifically provided by this Agreement with respect to Project infrastructure timing, City and Developer expressly agree that there is no requirement that Developer initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City shall not impose such a requirement on any Project Approval. However, Developer shall substantially complete construction of any approved off-site improvements that were a part of any phase of the project that received permits for construction, or bond for such improvements, to the satisfaction of the City Engineer, prior to Developer commencing construction of any subsequent phases of the project. The parties acknowledge that Developer cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as market demand, interest rates, competition and other similar factors.

(b) The parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, and Developer shall determine which part of the Project Site to develop first, and at Developer's chosen schedule. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that

the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Developer's rights under this Section 6.08(b) shall be subject to the requirement that adequate infrastructure to serve each phase of the Project is constructed concurrently with such phase. The City Manager shall reasonably determine what infrastructure will be required to serve each phase of the Project, which determination shall be consistent with Applicable Law.

(c) Nothing in this Agreement shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.

Section 6.09 **Exempting Fees, Mitigation Measures and Similar Requirements Imposed by Outside Agencies.** Notwithstanding any other provision of this Agreement, the City agrees to exclude Developer from any and all discretionary collection agreements regarding fees, mitigation measures and similar requirements including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or on the Project Site after the Effective Date through the Term of this Agreement. This Section 6.09 shall not prohibit the City from imposing on Developer any fee, mitigation measure or similar requirement or obligation that is required by a local or regional agency in accordance with local, regional, State or Federal obligations and implemented by the City in cooperation with such local, regional, state or federal agency, provided such fee, mitigation measure or similar requirement or obligation is imposed in a similar manner on similarly situated properties within the City as, for example, collection of the Regional Transportation Development Impact Fee.

Section 6.10 **City's Joint-Inspection Jurisdiction.** Developer acknowledges that City has joint inspection jurisdiction within other third-party governmental entities within any and all City rights-of-way and easements.

ARTICLE VII AMENDMENT

Section 7.01 **Amendment to Project Approvals, Subsequent Approvals.** To the extent permitted by State and Federal law, any Project Approval or Subsequent Approval may, from time to time, be amended or modified in the following manner:

(a) **Administrative Project Amendments.** Upon the written request of Developer for an amendment or modification to a Project Approval or Subsequent Approval, the City Manager or his/her designee shall determine: (i) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (ii) whether the requested amendment or modification is consistent with this Agreement, Applicable Law, applicable uniform codes and State or Federal law. If the City Manager or his/her designee finds that the proposed amendment or modification is minor in the context of the entire Project, consistent with this Agreement and Applicable Law, and will result in no new significant environmental impacts not addressed and mitigated in the EIR, the amendment shall be

determined to be an “**Administrative Project Amendment**” and the City Manager or his/her designee may, except to the extent otherwise required by law, approve the Administrative Project Amendment without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, changes in trail alignments, minor variations in lot layouts, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Project Site diagram or Project Site legal description shall be treated as Administrative Project Amendments.

(b) Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to a Project Approval or Subsequent Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

Section 7.02 **Amendment of this Agreement.** This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, as follows:

(a) Administrative Agreement Amendments. The City Manager, or his/her designee, may, except to the extent otherwise required by law, enter into certain amendments of this Agreement on behalf of the City as long as any such amendment does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Developer (“**Administrative Agreement Amendment**”), and shall not, except to the extent otherwise required by law, require notice or public hearing before the parties may execute an amendment hereto. For purposes of this Section 7.02(a), the term “substantially affect” shall be evaluated in the context of the entire Project.

(b) Amendment Exemptions. No amendment of a Project Approval or Subsequent Approval, whether done administratively or not, shall require an amendment to this Agreement. Instead, any such matter automatically shall be deemed to be incorporated into the Project and vested under this Agreement when written and executed by both parties.

(c) Amendment Limitations. In consideration of the scope of the benefits to City set forth in this Agreement, any amendment to this Agreement shall only be subject to such new terms and conditions, including new exactions or other obligations, as are reasonably related to the impacts on City directly attributable to such amendment.

ARTICLE VIII ASSIGNMENT, TRANSFER AND NOTICE

Section 8.01 **Assignment of Interests, Rights and Obligations.** Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.

Section 8.02 **Transfer Agreements.**

(a) In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, any deed of trust beneficiary or mortgagee, or a "Non-Assuming Transferee" (as defined in Section 8.03), Developer and the transferee shall enter into a written agreement (a "**Transfer Agreement**") regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement may (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred or assigned, as described in the Transfer Agreement, provided that the transferee expressly assumes such obligations, (ii) transfer to the transferee vested rights to improve that portion of the Project being transferred and (iii) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment.

(b) Any Transfer Agreement shall be binding on Developer, City and the transferee and, unless otherwise provided for in Section 8.03 of this Agreement, shall require the City's prior written consent, which consent shall not be unreasonably withheld. Failure by City to respond within thirty (30) days of a written request by Developer for City's consent shall be deemed City's approval of the Transfer Agreement in question. City may refuse to give its consent only if, in light of the proposed transferee's reputation and financial resources, such transferee would not in City's reasonable determination be able to perform the obligations proposed to be assumed by such transferee. Such determination shall be made by the City Manager and is appealable to the City Council. In no event, however, shall City refuse to give its consent to a proposed transferee pursuant to this Section 8.02(b) if such transferee has a net worth of at least Ten Million Dollars (\$10,000,000) increased annually by the CPI for the San Francisco-Oakland area, with the first increase implemented in January 2021 reflecting 2020 increases and documented in a manner reasonably acceptable to City. Upon recordation of any Transfer Agreement in the Official Records of Contra Costa County, Developer shall automatically be released from those obligations assumed by the transferee therein.

(c) Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.

Section 8.03 **Non-Assuming Transferees.** Except as otherwise required by Developer in Developer's sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor City's consent shall be required in connection with (i) any single residential parcel conveyed to a purchaser, (ii) any property transferred as fewer than ten (10) lots to a single retail builder or (iii) any property that has been established as one or more separate legal parcels for office, commercial, open space, park, school or other nonresidential uses. The transferee in such a transaction and its successors ("**Non-Assuming Transferees**") shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this Section 8.03 shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.

Section 8.04 **Notice of Compliance Generally.** Subject to City's finding that the facts contemplated by clauses (i) through (iii) herein are true and accurate, within thirty (30) days following any written request which Developer may make from time to time, City shall execute and deliver to Developer (or to any party requested by Developer) a written "**Notice of Compliance**," in recordable form, duly executed and acknowledged by City, that certifies that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications, (ii) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such default, and (iii) any other information reasonably requested by Developer. City's failure to deliver such notice within such time period shall constitute a conclusive presumption against City that this Agreement is in full force and effect without modification except as may be represented by the Developer and that there are no uncured defaults in the performance of the Developer, except as may be represented by the Developer. Developer shall have the right at Developer's sole discretion, to record the Notice of Compliance.

ARTICLE IX COOPERATION IN THE EVENT OF LEGAL CHALLENGE

Section 9.01 Cooperation.

(a) Developer agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of the Agreement or any Project Approval or any Subsequent Project Approval, or otherwise arising out of or stemming from this Agreement. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense. The parties shall cooperate in defending such action or proceeding. Developer shall pay for City's costs of defense, whether directly or by timely reimbursement on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorneys' fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent in regard to defense of the action or proceeding. The parties shall use best efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel and Developer agrees to pay directly or timely reimburse on a monthly basis City for all such court costs, attorney fees, and time referenced herein.

(b) Developer also agrees to indemnify, defend and hold harmless the City, its officials, officers, employees, agents and consultants from any claims, costs, damages or other liabilities for any personal injury or death, or property damage, resulting from the construction of the Project or of operations by the Developer, its officers, employees, agents or consultants, under this Agreement, except for such claims, costs, damages, or other liabilities which are caused by the sole or gross negligence of the City, its officials, officers, employees, agents, or consultants. Developer may select its own legal counsel to represent Developer's interests at Developer's sole cost and expense.

(c) The parties agree that this Section 9.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.01, which shall survive such invalidation, nullification or setting aside.

Section 9.02 **Cure; Reapproval.**

(a) If, as a result of any administrative, legal or equitable action or other proceeding as described in Section 9.01, all or any portion of this Agreement, Project Approvals, or Subsequent Approvals are set aside or otherwise made ineffective by any judgment (a "**Judgment**") in such action or proceeding (based on procedural, substantive or other deficiencies, hereinafter "**Deficiencies**"), the parties agree to use their respective best efforts to sustain and reenact or readopt this Agreement, Project Approvals, and/or Subsequent Approvals that the Deficiencies relate to, as follows, unless the parties mutually agree in writing to act otherwise:

(i) If any Judgment requires reconsideration or consideration by City of this Agreement, Project Approval, or Subsequent Approval, then the City shall consider or reconsider that matter in a manner consistent with the intent of this Agreement. If any such Judgment invalidates or otherwise makes ineffective all or any portion of this Agreement or any Project Approval, or Subsequent Approval, then the parties shall cooperate and shall cure any Deficiencies identified in the Judgment or upon which the Judgment is based in a manner consistent with the intent of this Agreement and the Judgment. Upon the parties cure of such Deficiencies, City shall then take steps consistent with the Judgment necessary readopt or reenact this Agreement and any applicable Project Approval, Subsequent Approval, or any portion thereof.

(ii) Acting in a manner consistent with the intent of this Agreement or a Judgment includes, but is not limited to, recognizing that the parties intend that Developer may develop a single-family residential unit project, and adopting such ordinances, resolutions, and other enactments, including but not limited to a general plan amendment, rezoning, vesting subdivision map approvals, development plan approvals, PD Plan approvals, design review, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, final development plans, development agreements, permits, resubdivisions, and any amendments to, or repealing of, any of the foregoing as are necessary to readopt or reenact all or any portion of this Agreement, Project Approvals, and/or Subsequent Approvals without contravening the Judgment.

(b) The parties agree that this Section 9.02 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this Section 9.02, which shall survive such invalidation, nullification or setting aside.

ARTICLE X

DEFAULT; REMEDIES; TERMINATION

Section 10.01 **Defaults.** Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (the “**Complaining Party**”) (unless such period is extended by mutual written consent), shall constitute a default under this Agreement. The Complaining Party’s notice (“**Default Notice**”) shall specify the nature of the alleged failure and, may specify the manner in which the failure satisfactorily may be cured By the other party (the “**Defaulting Party**”). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of a default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings, which it may deem necessary to protect, assert, or enforce any such rights or remedies. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then no fault shall be deemed to have occurred if: (a) the cure shall be commenced at the earliest practicable date following receipt of the Default Notice; (b) the cure is diligently prosecuted to completion at all times thereafter; (c) at the earliest practicable date (if no event later than thirty (30) days after the Defaulting Party’s receipt of the Default Notice), the Defaulting Party provides written notice to the Complaining Party that the cure cannot practicably be completed within such 30-day period; and (d) the cure is completed at the earliest practicable date. In no event shall Complaining Party be precluded from exercising remedies if a default is not cured within one hundred twenty (120) days after the Notice of Default is given. Complaining Party shall not send notice to any third party, including, but not limited to, bonding and surety companies, until such time as the cure opportunities set forth above have expired unless otherwise required by applicable law. Upon the occurrence of a default under this Agreement, the Complaining Party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured consistent with this Section, then no default shall exist and the Complaining Party shall take no further action.

Section 10.02 **Termination.** If City elects to consider terminating this Agreement due to a material default of Developer, then City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. As used herein, a finding of materiality shall be based on the effect of the default in relation to the size and scope of the Project. Developer shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing, and elects to terminate this Agreement, City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter; provided, however, that if Developer files an action to challenge City’s termination of this Agreement within such 60-day period, then this Agreement shall remain in

full force and effect until a trial court has affirmed City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

Section 10.03 **Periodic Review.**

(a) **Conducting the Periodic Review.** Throughout the Term of this Agreement, at least once every twelve (12) months following the execution of this Agreement, City shall review the extent of good-faith compliance by Developer with the terms of this Agreement. This review (the "**Periodic Review**") shall be conducted by the City Manager or his/her designee and shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code § 65865.1. Developer also agrees to pay City annually the greater of Five Thousand Dollars (\$5,000) or the actual cost of Periodic Review Fee (not to exceed Ten Thousand Dollars (\$10,000)). The Five Thousand Dollars (\$5,000) shall be increased annually thereafter by the CPI for the San Francisco Oakland Area, with the first increase implemented in January 2021 reflecting 2020 increases. Such Periodic Review Fee shall only be paid in the years in which a Periodic Review is actually conducted.

(b) **Notice.** At least ten (10) days prior to the Periodic Review, and in the manner prescribed in Article XII of this Agreement, City shall deposit in the mail to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Developer's performance hereunder. Developer shall be permitted an opportunity to respond to City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Such response shall be made to the City Manager.

(c) **Good Faith Compliance.** During the Periodic Review, the City Manager shall review Developer's good-faith compliance with the terms of this Agreement. At the conclusion of the Periodic Review, the City Manager shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. The decision of the City Manager shall be appealable to the City Council. If the City Manager finds and determines that Developer has not complied with such terms and conditions, the City Manager may recommend to the City Council that it terminate or modify this Agreement by giving notice of its intention to do so, in the manner set forth in California Government Code §§ 65867 and 65868. The costs incurred by City in connection with the Periodic Review process described herein shall be shared equally by Developer and City.

(d) **Failure to Properly Conduct Periodic Review.** If, after thirty (30) days following Developer's notice requesting a Periodic Review, City fails to initiate the Periodic Review, such failure shall be conclusively deemed an approval by City of Developer's compliance with the terms of this Agreement.

(e) **Written Notice of Compliance.** With respect to any year for which Developer has been determined or deemed to have complied with this Agreement, City shall, within thirty (30) days following a written request by Developer, provide Developer with a written notice of compliance, in recordable form, duly executed and acknowledged by City.

Developer shall have the right, in Developer's sole discretion, to record such notice of compliance.

Section 10.04 **Excusable Delay; Extension of Time of Performance.** In addition to specific provisions of this Agreement, neither party shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, terrorism, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), enactment of conflicting State or Federal laws or regulations, or judicial decisions. Neither party shall be deemed to be in default where delays in performance or failure to perform are due to a court order arising out of or related to litigation attacking the validity of this Agreement, the Project Approvals, the Subsequent Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project. Developer shall not be deemed to be in default where delays in performance or failure to perform are due to Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project and unrelated to Developer's actions or inactions and beyond Developer's control. Upon the properly noticed request of either party hereto, as required by Section 12.09, an extension of time for the performance of any obligation whose performance has been so prevented or delayed will be set forth in writing. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon in writing.

Section 10.05 **Legal Action.** Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.

Section 10.06 **California Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 10.07 **Resolution of Disputes.** With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer shall, at City's request, meet with City. The parties to any such meetings shall attempt in good faith to resolve any such disputes. If the parties are then unable to resolve their dispute, either party may commence mediation by providing to JAMS, or its successor, and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to

preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties both agree in writing. The provisions of this Section 10.07 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered. Nothing in this Section 10.07 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the parties to such meetings.

Section 10.08 **Attorneys' Fees.** In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and any related other costs incurred in that proceeding in addition to any other relief to which it is entitled.

Section 10.09 **Default by City or Developer.** In the event City or Developer defaults under the terms of this Agreement, City or Developer shall have all rights and remedies provided herein and under law.

ARTICLE XI

NO AGENCY, JOINT VENTURE OR PARTNERSHIP

It is specifically understood and agreed to by and between the parties hereto that unless otherwise expressly provided herein (i) the subject development is a private development; (ii) City have no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals or Subsequent Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals, Subsequent Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer. The City agrees that Developer's obligations under this Agreement related to the construction of Project water, sewer and drainage infrastructure improvements, the grading and construction of traffic improvements, and the grading and construction of any other public improvements (collectively, the "**Public Improvements**") are all public works of improvement the City is requiring as a condition of regulatory approval of the Project and that the Project is an otherwise private development. The City further agrees that it will contribute no more money, or the equivalent of money, to the overall Project than is required to construct the Public Improvements and that City maintain no proprietary interest in the overall Project.

ARTICLE XII MISCELLANEOUS

Section 12.01 **Incorporation of Recitals and Introductory Paragraph.** The Recitals contained in this Agreement, and the introductory paragraph preceding the Recitals, are hereby incorporated into this Agreement as if fully set forth herein.

Section 12.02 **Enforceability.** City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code § 65866. In the event of any conflict between the provisions of this Agreement and Applicable Law, the Project Approvals or any Subsequent Approval, this Agreement shall prevail.

Section 12.03 **Findings.** City hereby finds and determines that execution of this Agreement furthers public health, safety and general welfare and that the provisions of this Agreement are consistent with the General Plan.

Section 12.04 **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

Section 12.05 **Other Necessary Acts.** Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals, Subsequent Approvals and this Agreement and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 12.06 **Construction.** Each reference in this Agreement to this Agreement or any of the Project Approvals or Subsequent Approvals shall be deemed to refer to the Agreement, Project Approval or Subsequent Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 12.07 **Other Miscellaneous Terms.** The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 12.08 **Covenants Running with the Land.** All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Project, as appropriate, runs with the Project Site and is binding upon the owner of all or a portion of the Project Site and each successive owner during its ownership of such property.

Section 12.09 **Notices.** Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by fax (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to: City Manager
City of Pittsburg
Civic Center
65 Civic Avenue
Pittsburg, CA 94565-2830

With Copies to: City Attorney
City of Pittsburg
Civic Center
65 Civic Avenue
Pittsburg, CA 94565-2830

If to Developer, to: Albert D. Seen0, III
Faria Land Investors, LLC
4061 Port Chicago Hwy, Suite H
Concord, CA 94520

With Copies to: Faria Land Investors, LLC
Attn: Legal Department
4061 Port Chicago Hwy., Suite H
Concord, CA 94520

Section 12.10 **Entire Agreement, Counterparts and Exhibits.** This Agreement is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of 27 pages and four exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof. All waivers of any provisions of this Agreement shall be in writing and signed by the appropriate authorities of City and Developer. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

EXHIBIT A - Legal Description
EXHIBIT A-1 - Project Site Diagram
EXHIBIT B - Applicable Fees
EXHIBIT C - Affordable Housing Agreement

Section 12.11 **Recordation of Development Agreement.** Pursuant to California Government Code § 65868.5, no later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement, or Memorandum thereof, in the Official Records of the County of Contra Costa. The parties agree to cooperate as to preparation, execution, and recording of a Memorandum hereof.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

CITY:

CITY OF PITTSBURG,
a California municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
City Attorney

DEVELOPER:

FARIA LAND INVESTORS, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION

(To follow.)

DRAFT

EXHIBIT A-1

PROJECT SITE DIAGRAM

(To follow.)

DRAFT

EXHIBIT B
APPLICABLE FEES

(To follow.)

DRAFT

EXHIBIT C
AFFORDABLE HOUSING AGREEMENT

(To follow.)

DRAFT

Attachment 2
Applicable General Plan Goals and Policies
Faria/Southwest Hills annexation Project, AP-10-717 (GP, RZ, DA)

General Plan Goal or Policy	Analysis
Land Use Element – Citywide	
2-G-5: Promote a diversity of housing ftypes, including opportunities for hillside estate development, as well as smaller lot, infill, and high-density housing.	Consistent. Implemented with the proposed Master Plan.
2-G-8: Ensure that hillside development enhances the built environment, improves safety through slope stabilization, is respectful of topography and other natural constraints, and preserves ridgelines and viewsheds.	Consistent. Implemented with the proposed Master Plan.
2-G-9: Exercise leadership in securing development and preserving open space consistent with the General Plan in portions of the Planning Area that will ultimately be inside the city boundaries.	Consistent. The proposed project would result in more open space land than what currently exists in the General Plan.
2-P-4: Consider amendments to the current Sphere of Influence for properties along the eastern and western edges of the City, to take advantage of providing City services for the development of adjacent vacant lands.	Consistent. Project area is within the Sphere of Influence.
2-P-6: Ensure provision of community amenities within planned development projects, including parks and recreation facilities, streetscaping and pedestrian paths, transit facilities, parking areas, and public safety facilities. Ensure construction of amenities at a time that is in balance with the needs of the development.	Consistent. Implemented with the proposed Master Plan.
2-P-15: Ensure minimum residential densities, in accordance with the ranges stipulated in this Plan.	Consistent.
2-P-17: Maintain regulations to permit second units (accessory dwellings) in single-family residential developments in accordance with State law.	Consistent. Implemented with the proposed Master Plan.
2-P-22: Ensure that all General Plan policies apply to hillside land irrespective of zoning – whether Planned Development or any other base district.	Consistent. Proposed General Plan amendments (as described in the project description) would ensure consistency with this policy.
2-P-23: Restrict development on minor and major ridgelines (as identified in Figure 4-2). Encourage residential construction on flatter natural slopes or non-sensitive graded areas that reduce environmental and visual impacts. Minimize cut-and-fill of natural hillsides.	Consistent. There are no designated minor or major ridgelines on the site.
2-P-24: Prohibit new development on designated ridgelines. Ensure that residential developers cluster housing units to reduce both environmental and visual impact of hillside development.	Consistent. There are no designated minor or major ridgelines on the site. Proposed development area would be focused to the valley-like area in the center of the site, minimizing the potential for visual impacts

General Plan Goal or Policy	Analysis
2-P-25: As a condition of approval, ensure that residential developers incorporate natural creeks as open space amenities into the design of residential neighborhoods.	
2-P-26: Ensure that new hillside development utilizes fire-resistant building materials, per the Uniform Building Code. Require that all residential units adjacent to open slopes maintain a 30-ft setback with fire-resistant landscaping.	Consistent. The Master Plan requires maintenance of a 100-ft setback with fire resistant landscaping,
*2-P-27: Minimize single-access residential neighborhoods in the hills; maximize access for fire and emergency response personnel.	Consistent. Implemented with the proposed Master Plan.
Land Use Element – Southwest Hills	
2-G-33: Maintain the general character of the hill forms.	Proposed for Deletion.
2-G-34: Encourage development of higher-end, low-density residential	Consistent. Proposed project densities would not exceed 5 units per acre.
2-P-85: Ensure extension of West Leland Road and San Marco Boulevard through the area, as shown on the General Plan Diagram, as a condition of any new approval in the area.	Consistent. Proposed Master Plan would require San Marco Blvd. to extend south through the site.
2-P-90: Ensure that all new development in Southwest Hills provides trailheads and linkages into the multi-use trail system planned to extend from West Leland Road to Oak Hills Park.	Consistent. Implemented with the proposed Master Plan.
2-P-91: Ensure as part of the development review process that any future subdivision in the southwest hills that is adjacent to the 2005 Pittsburg voter approved urban limit line, establishes a greenbelt buffer within the City's urban limit line between the proposed development and the urban limit line. The greenbelt buffer shall include all land between the City of Concord border and the first set of ridges, including the tops of these same ridges which generally run parallel to the common border. The City will consider, in conjunction with subdivision applications on these properties and related environmental analysis, general plan and/or the transfer of lost development rights as a result of these greenbelts to other portions of these properties, while not increasing the overall number of units permitted on these properties.	Consistent. While no subdivision or site specific development plan has been proposed at this time, the land use and rezoning amendments proposed, together with the Master Plan, would implement this policy by establishing the required greenbelt buffer along the western edge of the site through new Open Space designations.
2-P-93: Allow Low Density residential development west of Bailey Road, as shown on the General Plan Diagram. Ensure that such development is minimally visible from Bailey Road and mitigates any impacts to creeks and wetlands in the area.	Consistent. Implemented with the proposed Master Plan.

General Plan Goal or Policy	Analysis
2-P-96: Allow an overall maximum density of 3.0 du/ac within the Low Density Residential areas south of the San Marco project and outside the present Sphere of Influence line with a maximum number of 1500 residential units.	Consistent. As proposed, the developable areas for residential use would be reduced; however, the project would still allow for buildout of up to 1,500 units, consistent with this policy.
Growth Management Element	
3-G-2: Realize the opportunities afforded by establishment of the Voter Approved Urban Limit Line to allow the City to grow in such a way as to diversify and expand the employment base, develop a range of housing opportunities, increase the depth of municipal fiscal resources, enhance the quality of urban life for all Pittsburg residents and prohibit urban development beyond the Voter Approved Urban Limit Line.	Consistent. The project would allow development of new higher-end single family homes in the southwest hills, within the Voter Approved Urban Limit Line.
3-G-5: Ensure that new residential, commercial and industrial growth within the Voter-Approved Urban Limit Line pays its share of the costs for the construction of facilities needed to serve that growth.	Consistent. Implemented primarily through the terms of the proposed Development Agreement.
3-G-10: Foster development of a variety of housing types, densities and prices to balance the City's housing stock and meet the City's regional fair share housing needs for people of all income levels. (Housing Element Goal 13-G-1)	Consistent. According to the current Regional Housing Needs Allocation (RHNA), there is a need for more above-moderate income housing within the City.
3-P-1: Allow urban and suburban development only in areas where public facilities and infrastructure (police, fire, parks, water, sewer, storm drainage, and community facilities) are available or can be provided.	Consistent.
Urban Design Element	
4-G-1: Retain views of major and minor ridgelines within the southern hills, as designated in Figure 4-2.	Consistent. There are no designated minor or major ridgelines on the site; however, the existing ridgelines on the east and west side of the site would be preserved as open space.
4-G-2: Preserve minor ridgelines south of State Route 4 as open space to provide screening for hillside development.	Consistent. There are no designated minor or major ridgelines on the site; however, the existing ridgelines on the east and west side of the site would be preserved as open space.
4-G-3: Ensure that new residential development in the southern hills provides adequate transition between urban and open space uses on the City's edge.	Consistent. Project includes establishment of a greenbelt buffer along the western edge of the site.
4-G-4: Encourage development that preserves unique natural features, such as topography, rock outcroppings, mature trees, creeks, and ridgelines, in the design of hillside neighborhoods.	Modification Proposed: Encourage development that preserves unique natural features, such as topography, rock outcroppings, mature trees, creeks, and <u>designated major and minor ridgelines</u> , in the design of hillside neighborhoods.

General Plan Goal or Policy	Analysis
4-G-5: Encourage a sense of rural character in the design and construction of hillside development, including extensive landscaping, rooftop terraces, sloping rooflines, and use of natural materials.	Consistent. Implemented by the proposed Master Plan.
*4-P-1: Require ridge setbacks for all new hillside development. Building pads should be located at least 150 feet away from the crest of a major ridgeline (measured horizontally from the centerline), as designated in Figure 4-3.	Consistent. There are no designated minor or major ridgelines on the site; however, the project would meet the 150-foot setback requirement along its western edge.
*4-P-2: As part of the development review process, require design review of proposed hillside development. Ensure that: • Hillside development is clustered in small valleys and behind minor ridgelines, to preserve more prominent views of the southern hills. • Hillside streets are designed to allow open views by limiting the building of structures or planting of tall trees along the southern edge or terminus of streets.	Modification Proposed: As part of the development review process, require design review of proposed hillside development. <u>Encourage</u> Ensure that: • Hillside development <u>that</u> is clustered in small valleys and behind minor ridgelines, to preserve more prominent views of the southern hills. • Hillside streets <u>that</u> are designed to allow open views by limiting the building of structures or planting of tall trees along the southern edge or terminus of streets.
4-P-3: As part of the development review process, limit building heights and massing where views of the hills from adjacent properties and public spaces could be preserved.	Consistent. Implemented by the proposed Master Plan.
4-P-5: Design and install entry features at the entrances to the City, implemented through the City’s Capital Improvement Program. Use landscaping, signs, lighting, and other visual features to announce the gateway along regional roadways.	Consistent. Implemented by the proposed Development Agreement.
4-P-6: Ensure that developers of new residential projects in the southern hills plant trees and other vegetation along collector and arterial roadways, in order to maintain the sense of “rural” open space at the City’s southern boundary.	Consistent. Implemented by the proposed Master Plan.

General Plan Goal or Policy	Analysis
4-P-7: Ensure that design treatment of new development at the City's southern boundary retains a rural feel by: • Discouraging the use of solid walls along these edges (fences must be visually permeable; however, discourage use of chain link in front and side yards); • Using materials and design to promote a rural feeling (for example, wooden or other rustic materials); and • Encouraging development at the outer edge of the City to face outwards toward the rural landscape (preventing a solid wall of residential back yard fences).	Consistent. Implemented by the proposed Master Plan.
4-P-10: Minimize grading of the hillsides. Amend the City's Zoning Ordinance to allow density bonuses of 10 percent (maximum) for new hillside development that preserves 40 percent of natural hill contours.	Proposed for Deletion
*4-P-11: Limit grading of hillside areas over 30 percent slope (see Figure 10-1) to elevations less than 900 feet, foothills, knolls, and ridges not classified as major or minor ridgelines (see Figure 4-2). During review of development plans, ensure that necessary grading respects significant natural features and visually blends with adjacent properties.	Modification Proposed: Limit grading of hillside areas over 30 percent slope (see Figure 10-1 [of the General Plan]) to elevations less than 900 feet, foothills, knolls, and ridges not classified as major or minor ridgelines (see Figure 4-2 [of the General Plan]), <u>unless deemed necessary for slope stability remedial grading, or installation of City infrastructure.</u> During review of development plans, ensure that necessary grading respects significant natural features and visually blends with adjacent properties.
4-P-12: Encourage terracing in new hillside development to be designed in small incremental steps. Extensive flat pad areas should be limited.	Proposed for Deletion
*4-P-14: Preserve natural creeks and drainage courses as close as possible to their natural location and appearance.	Proposed for Deletion
*4-P-15: Minimize the visual prominence of hillside development by taking advantage of existing site features for screening, such as tree clusters, depressions in topography, setback hillside plateau areas, and other natural features.	Consistent. There are no designated minor or major ridgelines on the site; however, the existing ridgelines on the east and west side of the site would be preserved as open space.
4-P-16: Allow flag lots with common driveways within hillside neighborhoods, in order to encourage terracing of buildings while minimizing roadway cut-and-fill (see Figure 4-4).	Consistent. Implemented by the proposed Master Plan.
*4-P-17: Encourage clustering of Hillside Low-Density units in the Southern Hills, with resulting pockets of open space adjacent to major ridgelines and hillside slopes. Allow density bonuses of 10 percent (maximum) for preservation of 60 percent or more of a project's site area as open space.	Consistent. Implemented by the proposed project land use lay out with residential areas in the center valley and open space on the outer edges of the site.

General Plan Goal or Policy	Analysis
4-P-19: Encourage lot configuration such that perimeter walls and fences along arterial corridors within the southern hills are not needed.	Consistent. Implemented by the proposed Master Plan.
4-P-20: Discourage lot orientation that fronts onto the cross-slope of street segments on steep grades.	Proposed for Deletion
4-P-21: Encourage single-loaded streets parallel to steep slopes, with placement of lots on the uphill side of the street, such that homes front down-slope and allow open vistas from the public street.	Consistent. Implemented by the proposed Master Plan.
4-P-22: Discourage placement of lots that allow the rear of homes to be exposed to lower elevation views.	Proposed for Deletion
*4-P-24: Building forms should be “stepped” to conform to site topography. Encourage use of rooftop terraces and decks atop lower stories.	Consistent. Building type allowed by the proposed Master Plan.
*4-P-25: During development review, encourage residential rooflines that are oriented in the same direction as the natural hillside slope.	Proposed for Deletion
4-P-26: Reflect the predominant colors and textures within the surrounding landscape in selection of building materials for hillside development. Roof colors should tend toward darker earth tones, so that they are less visible from adjacent or upslope properties.	Proposed for Deletion
4-P-27: Maximize water conservation, fire resistance, and erosion control in landscape design through use of sturdy, native species. Use irregular planting on graded slopes to achieve a natural appearance.	Consistent. Implemented by the proposed Master Plan.
*4-P-28: Encourage developers to align and construct streets along natural grades. Minimize visibility of streets from other areas within the City (see Figure 4-7).	Consistent. Implemented by the proposed Master Plan.
4-P-29: Encourage the construction of split roadways on steep hillsides, where appropriate.	Consistent. Implemented by the proposed Master Plan.
*4-P-30: Ensure that all residential developers provide multi-use trails or trailheads connecting to local schools and parks, commercial centers, and regional open spaces.	Consistent. Implemented by the proposed Master Plan.
4-P-31: Provide on-street parking along hillside roads in parking bays where topography allows.	Consistent. Implemented by the proposed Master Plan.
Transportation Element	
7-P-13: Upgrade or extend the hillside access routes from Bailey Road, Buchanan Road, Kirker Pass Road, and proposed San Marco Boulevard, as development potential warrants.	Consistent. Extension of San Marco Blvd would be required by the proposed Master Plan.
*7-P-14: Increase access to alternative north-south routes providing connection to State Route 4, other than Railroad Avenue.	Consistent. Extension of San Marco Blvd would be required by the proposed Master Plan.

General Plan Goal or Policy	Analysis
*7-P-41: Ensure the provision of multi-use trails or trailheads within new hillside developments, preferably connecting to the regional trail network.	Consistent. Implemented by the proposed Master Plan.
Open Space, Youth and Recreation Element	
8-G-3: Promote a local trail and linear park system to provide access to regional open space areas, as well as connections between neighborhoods.	Consistent. Implemented by the proposed Master Plan.
*8-P-2: Pursue the development of park and recreation facilities within reasonable walking distance of all homes.	Consistent. Implemented by the proposed Master Plan.
8-P-9: Design the layout of new park facilities in accordance with the natural features of the land. Where possible, preserve such natural features as creeks and drainage ponds, rock outcroppings, and significant topographic features.	Consistent. Implemented by the proposed Master Plan.
8-P-21: Encourage new residential development in hillside areas to develop public trails and/or trailheads providing connections to other regional and local open spaces.	Consistent. Implemented by the proposed Master Plan.
Resource Conservation Element	
*9-P-1: Ensure that development does not substantially affect special status species, as required by State and federal agencies and listed in Table 9-1. Conduct assessments of biological resources as required by CEQA prior to approval of development within habitat areas of identified special status species, as depicted in Figure 9-1.	Consistent.
9-P-6: In order to preserve viewsheds of the southern hills, preserve major ridgelines (shown in Figure 9-1) throughout the Planning Area. Revise the Municipal Code per Policy 4-P-1: building pads and structural elements shall be located at least 150 feet away from (horizontally) the crest of a major ridgeline.	Consistent. There are no designated minor or major ridgelines on the site; however, the project would meet the 150-foot setback requirement along its western edge.
*9-P-7: During the design of hillside residential projects, encourage clustering of housing to preserve large, unbroken blocks of open space, particularly within sensitive habitat areas. Encourage the provision of wildlife corridors to ensure the integrity of habitat linkages.	Consistent. Implemented by the proposed Master Plan.
*9-P-9: Establish creek setbacks along riparian corridors, extending a minimum of 50 to 150 feet laterally on each side of the creek bed. Setback buffers for habitat areas of identified special status species and wetlands may be expanded as needed to preserve ecological resources.	Consistent. Implemented by the proposed Master Plan.
Health and Safety Element	

General Plan Goal or Policy	Analysis
*10-P-3: Regulate the grading and development of hillside areas for new urban land uses. Ensure that such new uses are constructed to reduce erosion and land sliding hazards: • Limit cut slopes to 3:1, except where an engineering geologist can establish that a steeper slope would perform satisfactorily over the long term. • Encourage use of retaining walls or rock-filled crib walls as an alternative to high cut slopes. • Ensure revegetation of cut-and-fill slopes to control erosion. • Ensure blending of cut-and-fill slopes within existing contours, and provision of horizontal variation, in order to mitigate the artificial appearance of engineered slopes.	Consistent. Implemented by the proposed Master Plan.
*10-P-8: During development review, ensure that new development on unstable slopes (as designated in Figure 10-1) is designed to avoid potential soil creep and debris flow hazards. Avoid concentrating runoff within swales and gullies, particularly where cut-and-fill has occurred.	Consistent. Implemented by the proposed Master Plan.
*10-P-11: Form geological hazard abatement districts (GHADs) prior to development approval in unstable hillside areas (as designated in Figure 10-1) to ensure that geotechnical mitigation measures are maintained over the long-term, and that financial risks are equitably shared among owners and not borne by the City.	Consistent. Implemented by the proposed Master Plan.
Housing Element	
13-G-1: Foster development of a variety of housing types, densities, and prices to balance the City's housing stock and meet Pittsburg's regional fair share housing needs for people of all income levels.	Consistent.
13-P-1.2: Encourage the construction of both high end and moderate-income housing in the southern foothills, downtown, along the waterfront, and throughout Pittsburg to provide above moderate-income housing opportunities in the community and to increase economic activity within the city.	Consistent. Implemented by the proposed Master Plan.
13-P-1.2.A: Establish minimum lot sizes when pre-zoning the foothills to accommodate large homes. Provide flexible lot sizes on up to 50% of the lots, when requested, in conjunction with a density bonus and long-term affordable housing agreement.	Consistent. Implemented by the proposed Master Plan.
13-P-1.2.B: Ensure subdivisions in the foothills include an adequate supply of estate-sized lots for estate size homes.	Consistent. Implemented by the proposed Master Plan.

General Plan Goal or Policy	Analysis
13-P-1.2.D: Support the development of moderate and above moderate income housing within existing City limits such as high end condominiums, townhouses, and single-family units with premium views and amenities throughout the city to increase economic activity within these areas.	Consistent. Implemented by the proposed Master Plan.



City of Pittsburg

Community Development Department – Planning Division

65 Civic Avenue, Pittsburg, CA 94565 | Tel: (925) 252-4920 | Fax: (925) 252-4814

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the **PLANNING COMMISSION** of the City of Pittsburg will conduct an online public meeting on:

DATE: Jul 28, 2020
TIME: 7:00 p.m.
PLACE: Zoom Teleconference via Streaming Media on the City's homepage,
www.ci.pittsburg.ca.us (see public advisory on last page)

Concerning the following matter:

Recommendation on the Faria/Southwest Hills General Plan Amendments, Rezoning Amendments, and Development Agreement. AP-10-717 (GPA, RZ, DA)

This is an application by Louis Parsons, on behalf of Faria Land Investors, requesting a recommendation for City Council approval of a development agreement, amendments to the General Plan and rezoning designations, and adoption of a Master Plan for future development of an approximately 607-acre site located in the hills southwest of the existing city limits. The proposed Master Plan would allow for development of approximately 341 acres for residential use and require approximately 265 acres to be preserved for open space, where the current General Plan allows for up to 478 acres of residential use and 129 acres of open space. In addition, the proposed project also includes consideration of an Environmental Impact Report (available for review at www.ci.pittsburg.ca.us/faria) and a subsequent request for the city to initiate proceedings to annex the property to the city of Pittsburg. APN's 091-040-002, 092-010-002 & -006, 092-020-002 & -003, 092-040-008, 092-050-002, and a portion of 092-030-012.

PROJECT PLANNER: Kristin Pollot, (925) 252-6941 or kpollot@ci.pittsburg.ca.us

Why am I receiving this notice?

You are receiving this notice because you have either previously requested notifications from the Planning Division, or a project has been proposed in your neighborhood and all property owners within a minimum 300-foot radius of the project site are required to be notified under the Pittsburg Municipal Code.

Where can I get more information about this project?

The complete file for this project is available for public inspection; please contact the project planner listed above to make necessary arrangements.

What can I do if I have comments on the project?

Comments or objections to the project can be made by writing or through e-mailed testimony during the meeting. Written comments citing the project name may be emailed to the project planner listed above or may be mailed or delivered to Pittsburg Planning Division, 65 Civic Avenue, Pittsburg, CA 94565. Comments during the meeting can be submitted via email to meetingcomments@ci.pittsburg.ca.us.

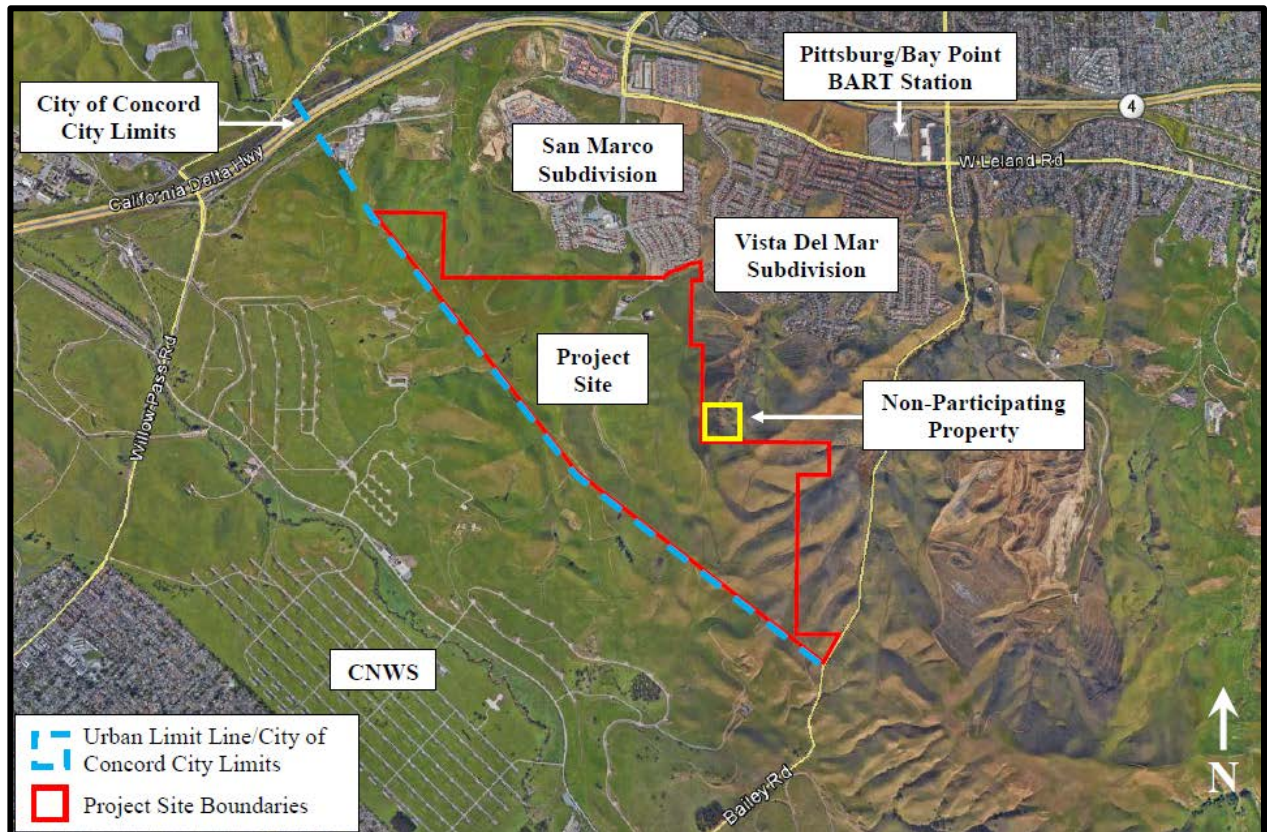
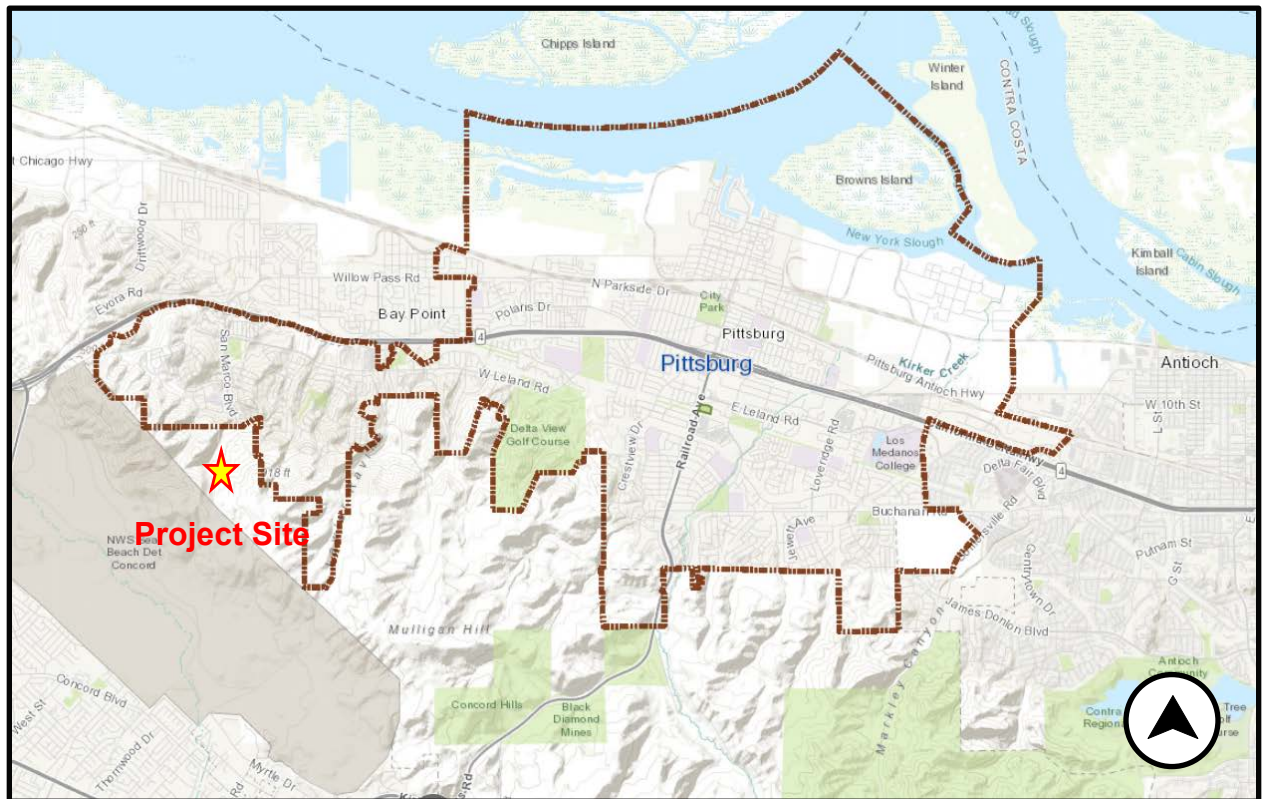
Pursuant to Section 65009 of the California Government Code, if you challenge this matter in court, you may be limited to those issues you or someone else raised at the public hearing described in this notice, or in written correspondence on the matter delivered to this agency at, or prior to the public hearing. Any written correspondence delivered to the Planning Division before the hearing body's action on the matter will become a part of the administrative record.

*Para información en español:
(925) 252-4920*

KRISTIN POLLOT, SECRETARY
PITTSBURG PLANNING COMMISSION

Project Title: Recommendation on the Faria/Southwest Hills General Plan Amendments, Rezoning Amendments, and Development Agreement. AP-10-717 (GPA, RZ, DA)

Location: Southwest of the existing city limits; APN's 091-040-002, 092-010-002 & -006, 092-020-002 & -003, 092-040-008, 092-050-002, and a portion of 092-030-012.



PUBLIC ADVISORY:
THE CITY COUNCIL CHAMBER WILL NOT BE OPEN TO THE PUBLIC

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, the regular meeting of the Planning Commission for **July 28, 2020** will be conducted telephonically through Zoom and broadcast live on the City's homepage.

Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Council Chamber will not be open for the meeting. Planning Commissioners will be participating telephonically and will not be physically present in the Council Chamber.

To view the meeting online during its broadcast:

1. Go to www.ci.pittsburg.ca.us
2. On the right-hand side of the page, click the "Streaming Media" button

Comments on this item can be submitted via email to:
meetingcomments@ci.pittsburg.ca.us

If you wish to have your comments read to the Planning Commissioners during the appropriate Public Comment period, please indicate in the Subject Line "FOR PUBLIC COMMENT" and list the item number you wish to comment on. If your comment is for a non-agenda item, indicate "FOR PUBLIC COMMENT – NON-AGENDA." Comments that you want read to the Commission will be subject to the three minute time limitation (approximately 350 words). Written comments that are only to be provided to Commission and not read at the meeting will be distributed to the Commission prior to the meeting if received by 5:00 p.m. the date of the meeting. Comments via text and social media (Facebook, Nextdoor, etc.) will not be accepted.

The City of Pittsburg thanks you in advance for taking all precautions to prevent spreading the COVID-19 virus.